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No. 82-23

In The

Supreme Court of the United States

October Term, 1982

FRANK MARSH, State Treasurer, and
ROBERT E. PALMER, Chaplain
of the Nebraska Unicameral,

Petitioners,

vs.

ERNEST CHAMBERS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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Petition for Writ of Certiorari Docketed July 6, 1982

Limited Certiorari Granted November 1, 1982

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

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FRANK MARSH, State Treasurer, and
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ERNEST CHAMBERS,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RELEVANT DOCKET ENTRIES

December 12, 1979—Complaint with request for trial at Lincoln.

January 7, 1980—Answer of defendants.

June 19, 1980—Order (RCP) on Pretrial held 6-18-80, trial to be set by the court.

July 16, 1980—Deposition of Robert Palmer taken by plaintiff.

December 24, 1980—Memorandum of Decision (WKU).

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January 6, 1981—Defendants' Notice of Appeal.

January 6, 1981—Defendants' Statement of Issues on Appeal.

January 19, 1981—Plaintiff's Notice on Cross-Appeal with certificate of service on 1-19-81.

January 19, 1981—Plaintiff's Statement of Issues.

July 22, 1981—Notice of United States Supreme Court of filing petition for certiorari.

RELEVANT PLEADINGS, JURY INSTRUCTIONS, FINDINGS, CONCLUSIONS OR OPINIONS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV79-L-294

ERNEST CHAMBERS,

Plaintiff,

vs.

FRANK MARSH, State Treasurer, et al.,

Defendants.

Complaint for Declaratory and Injunctive Relief

(Filed December 12, 1979)

PRELIMINARY STATEMENT

The Nebraska Unicameral employs as a salaried officer a Chaplain, who for the past 14 years has been a member of the Christian clergy in Lincoln, Nebraska. The Chaplain opens each session with a prayer, which is recorded and subsequently printed, and which prayers make no effort to be non-sectarian but have frequent references to the Christian faith. This lawsuit, a civil rights action for declaratory and injunctive relief, is brought pursuant to the establishment clause of the First Amendment of the Constitution of the United States in an effort to remove the religious content from the Nebraska Legislature and to prevent the expenditure of public funds for such purpose.

JURISDICTION

1. This court has jurisdiction over plaintiff's claim for relief pursuant to 28 U. S. C. 1343 (3) since plaintiff's claim is brought pursuant to 42 U. S. C. 1983.

PLAINTIFF

2. The plaintiff, Ernest Chambers, is a duly elected State Senator of the Nebraska Unicameral Legislature, District 11, and a citizen and taxpayer of the State of Nebraska, and who is not a Christian.

DEFENDANTS

3. Defendant Frank Marsh is the duly elected State Treasurer of the State of Nebraska, and charged with the payment of public funds as salaries to members of the Legislature and particularly to the defendant, Robert E. Palmer. Defendant Marsh is a resident of the State of Nebraska.

4. Robert E. Palmer is and, for a number of years prior to the filing of this action, has been an ordained clergyman in the state of Nebraska of the Christian faith, and since 1965 has been a duly elected officer of the Nebraska Unicameral Legislature. Defendant Palmer is a resident of the state of Nebraska.

5. The defendants Frank Lewis, John DeCamp, Robert L. Clark, Tom Fitzgerald, Steve Fowler, Howard A. Lamb, Richard D. Marvel, Loran Schmit, and Jerome Warner are all members of the Executive Board of the Legislative Council of the Nebraska Unicameral Legislature, are all duly elected state legislators, and are residents of the state of Nebraska.

FACTUAL ALLEGATIONS

6. At the beginning of each session of the Nebraska Unicameral Legislature, the Executive Board of the Legislative Council of the Legislature, elects officers. One such officer is called "Chaplain." The election of said Chaplain is provided for by Rule 1, Section 2, of the Rules of the Nebraska Unicameral, Officers and Employees, which states in part:

> In addition the Legislature shall advise and consent to the recommendations of the Executive Board of the Legislative Council, the following officers: * * * chaplain.

Rule 1, Section 21, of the Rules states:

> The Chaplain shall attend and open with prayer each day's sitting of the Legislature.

7. The defendant, Robert E. Palmer, has been the duly appointed Chaplain of the Legislature since 1965. He is currently the Chaplain of the Legislature and as such is an officer. He is currently drawing a salary for the year 1979 of $319.72 per month. The salary is paid from the general funds of the state of Nebraska and is disbursed by the State Treasurer, Defendant Frank Marsh.

8. It is a requirement of the legislative rules that the Chaplain attend the full session, and open each day's sitting with a prayer. These prayers are recorded as the rest of the legislative session is recorded. No effort is made by the defendant Palmer to make the prayers nonsectarian, and they have frequent references to the Christian religion. At the conclusion of each legislative year, the prayers are printed at the expense of the state of Nebraska, and are distributed.

9. The plaintiff is a member of the Unicameral and is not a Christian, and his constitutional rights are offended by the inclusion of a salaried chaplain on the staff of the Legislature, paid for by public funds, and whose prayers are recorded as part of the day's events and subsequently printed at state expense. The existence of a Chaplain and the expenditure for his salary at state expense as well as the expenditure for the transcription of his prayers and the printing of his prayers is causing the plaintiff to suffer immediate, substantial and irreparable injury, and loss of his Constitutional rights for which there is no adequate remedy at law.

CLAIM FOR RELIEF

10. Plaintiff's claim for relief is brought pursuant to 42 U. S. C. § 1983, the Civil Rights Act of 1871. The plaintiff seeks to redress the loss of his rights under the First and Fourteenth Amendments of the Constitution of the United States, which loss is being caused by defendants while acting under the color of state law. The plaintiff seeks declaratory and injunctive relief on the grounds that the defendants' practices and polcieis (sic) are causing and will continue to cause the plaintiff to suffer irreparable injury and deprivation of his constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

1. That the court issue preliminary and permanent injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the defendants, members of the Executive Board of the Legislative Council of the Nebraska Unicameral Legislature, from enforcing Legisla-

tive Rule 1, sections 2 and 21, as aforesaid; enjoin the defendant Robert E. Palmer from assuming the post of Chaplain and from receiving compensation from the state of Nebraska; enjoin the defendant Frank Marsh, Treasurer of the state of Nebraska, from expending public funds for the payment of defendant Palmer's salary, or the recording or transcription of his daily prayers, and the subsequent printing and publication of his daily prayers.

2. That the court issue final declaratory relief pursuant to 28 U. S. C. § 2201 and 2202 declarig (sic) that Legislative Rule 1, Sections 2 and 21, as practiced and stated in the body of this Complaint, of the Nebraska Unicameral, be declared unconstitutional, void and unenforceable.

3. That the court award the plaintiff his costs and attorney's fees, and grant the plaintiff such additional and alternative relief as may seem just and equitable.

Dated this 11th day of December, 1979.

ERNEST CHAMBERS, Plaintiff

By: FRIEDMAN LAW OFFICES
Attorney for Plaintiff

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Plaintiff requests trial in Lincoln, Nebraska.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV79-L-294

ERNEST CHAMBERS,

Plaintiff,

vs.

FRANK MARSH, State Treasurer, et al.,

Defendants.

Answer

(Filed January 7, 1980)

COME NOW the defendants and for answer to plaintiff's complaint, admit, deny, and allege as follows:

1. Admit the allegations of paragraphs 1, 2, 3, 4 and 5 of plaintiff's complaint.

2. As to paragraph 6, deny that the Executive Board of the Legislative Council elects its own officers or those of the full Legislature, allege that the office of Chaplain is filled upon the advice and consent of the Legislature to recommendations of the Executive Board pursuant to Rule 1, Section 2 of the Rules of the Nebraska Unicameral as set out by plaintiff, and admit the substance of Rule 1, Section 21 of said Rules as set out by plaintiff.

3. As to paragraph 7, allege that the Chaplain's salary for the year of 1979 was calculated at the rate of $319.73 per month and paid only for the time the Legislature was in session, and admits that said defendant has served as Chaplain of the Legislature since 1965, is currently serving in that capacity, and is paid his salary

from the general funds of the State of Nebraska as dispersed by the State Treasurer, defendant Frank Marsh.

4. As to paragraph 8, allege that while the Rules of the Nebraska Unicameral provide that the Chaplain shall open each day's sitting of the Legislature with a prayer, the actual practice is that the prayer is given prior to the official convening of each day's sitting, and that some of these prayers are printed and distributed at state expense only to legislators or when solicited, and deny each and every other allegation contained therein.

5. As to paragraph 9, admit plaintiff is a member of the Unicameral, and deny each and every other allegation contained therein.

6. Deny that plaintiff is entitled to any temporary or permanent injunctive relief, any declaratory relief, or any costs or attorney's fees as alleged in his claim for relief and prayer for relief.

DEFENSES

7. Allege that the legislative rules providing for a Chaplain of the Nebraska Legislature, his compensation from public funds, the activities conducted by said Chaplain, and the recording, printing and distribution at state expense of the prayers delivered by said Chaplain before the opening of each day's legislative session are constitutionally permissible religious accommodations by the Legislature which are not violative of the establishment clause of the First Amendment of the Constitution of the United States, nor any of the civil rights thereby guaranteed plaintiff.

8. Allege that the selection and compensation of the Chaplain of the Nebraska Legislature, the activities conducted by said Chaplain, and the recording and printing of the prayers delivered by said Chaplain before the official opening of each day's legislative session are consistent with and protected by the rights of the members of the Legislature bestowed by the free exercise clause of the First Amendment of the Constitution of the United States.

FRANK MARSH, State Treasurer,
et al., Defendants,

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(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV79-L-294

ERNEST CHAMBERS,

Plaintiff,

vs.

FRANK MARSH, State Treasurer, et al.,

Defendants.

Order on Pretrial Conference

(Filed June 19, 1980)

A. *Foundation for Exhibits*: Foundation for the following exhibits has been waived:

Plaintiff #1, 2, 3, and 4.

B. *Uncontroverted Facts*: The parties have agreed that the following may be accepted as established facts for purposes of this case only:

1. The plaintiff, Ernest Chambers, is a duly elected State Senator of the Nebraska Unicameral Legislature, District 11, and a citizen and taxpayer of the State of Nebraska, and who is not a Christian.

2. Defendant Frank Marsh is the duly elected State Treasurer of the State of Nebraska, and charged with the payment of public funds as salaries to members of the Legislature and particularly to the defendant, Robert E. Palmer. Defendant Marsh is a resident of the State of Nebraska.

3. Robert E. Palmer is and, for a number of years prior to the filing of this action, has been an or-

dained clergyman in the State of Nebraska of the Christian faith, and since 1965 has been a duly elected officer of the Nebraska Unicameral Legislature.

4. The defendants Frank Lewis, John DeCamp, Robert L. Clark, Tom Fitzgerald, Steve Fowler, Howard A. Lamb, Richard D. Marvel, Loran Schmit, and Jerome Warner are all members of the Executive Board of the Legislative Council of the Nebraska Unicameral Legislature, are all duly elected state legislators, and are residents of the State of Nebraska.

5. At the beginning of each session of the Nebraska Unicameral Legislature, the Executive Board of the Legislative Council of the Legislature recommends the election of certain officers. One such officer is called "Chaplain." The election of said Chaplain is provided for by Rule 1, Section 2, of the Rules of the Nebraska Unicameral, Officers and Employees, which states in part:

> In addition the Legislature shall advise and consent to the recommendations of the Executive Board of the Legislative Council, the following officers: * * * chaplain.

Rule 1, Section 21, of the Rules states:

> The Chaplain shall attend and open with prayer each day's sitting of the Legislature.

6. The defendant, Robert E. Palmer, has been the duly appointed Chaplain of the Legislature since 1965. He is currently the Chaplain of the Legislature and as such is an officer. The salary of the Chaplain is currently $319.75 per month for each month the Legislature is in session. The salary is paid from the general funds of the

State of Nebraska and is disbursed by the State Treasurer, defendant Frank Marsh.

7. It is a requirement of the Rules of the Nebraska Legislature that the Chaplain attend the full session and open each day's sitting with prayer. These prayers are recorded each day in the Legislative Journal. In the years 1975, 1978, and 1979, prayer books containing selected offerings given during the legislative sessions of those years were prepared pursuant to motions made and approved on the floor of the Legislature. Copies of these books were distributed to the legislative membership and to other individuals upon request. Two hundred copies of the 1975 books were printed at state expense totaling $70.01; 200 copies of the 1978 books were printed at state expense totaling $260.40; and 100 copies of the 1979 book cost the state $128.15.

C. *Controverted and Unresolved Issues:* The issues remaining to be determined and unresolved matters for the court's attention are:

1. Jurisdiction of this court over plaintiff's claim.

2. Whether defendants and each of them are persons within the meaning of Title 42 U. S. C. § 1983.

3. Whether the prayers of the Defendant Palmer at the beginning of each legislative session are violative of the Establishment Clause of the First Amendment of the Constitution of the United States.

4. Whether the prayers of the defendant Palmer are protected by the Free Exercise Clause of the First Amendment of the Constitution of the United States.

5. Whether the Rules of the Nebraska Unicameral, authorizing the office of Chaplain and directing that the opening of each legislative session with prayer are "statutes, ordinances, regulations, customs or usages" within the meaning of Title 42 U. S. C. § 1983.

6. Whether plaintiff has suffered an injury or been deprived of rights, privileges, or immunities within the meaning of Title 42 U S. C. § 1983.

D. *Witnesses:*

Ernest Chambers

Robert Palmer — For Plaintiff

Richard Marvel

Frank Lewis — For Defendants

E. *Length of Trial:* Counsel Estimate, the trial will consume not less than 1 day, not more than 2 days.

F. *Depositions and Other Discovery Documents:*

Deposition of Robert Palmer

See attached Exhibit List.

G. *Trial Date:* The case is available for trial at a time to be later set by the court.

H. Proposed findings of fact shall be submitted and exchanged at commencement of trial.

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Approved by: .....
U. S. Magistrate, U. S. District Court

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CV79-L-294

ERNEST CHAMBERS,
Plaintiff,

vs.

FRANK MARSH, State Treasurer, et al.,
Defendants.

Statement of Issues on Appeal

(Filed January 6, 1981)

COME NOW defendants Frank Marsh, State Treasurer, and Robert E. Palmer, Chaplain of the Nebraska Legislature, and pursuant to Federal Rule of Appellate Procedure 10 and Rule 11(A) (2) of the Local Rules of the United States Court of Appeals for the Eighth Circuit state the issues on their appeal of the above-captioned matter to be as follows:

1. Whether the district court erred in finding that the doctrine of legislative immunity did not bar it from

asserting jurisdiction over plaintiff's claim against defendants.

2. Whether the district court erred in failing to find that the Tenth Amendment to the United States Constitution precluded it from asserting jurisdiction over plaintiff's claim against defendants.

3. Whether the district court erred in finding that the compensation of the Chaplain of the Nebraska Legislature from public funds has violated plaintiff's civil rights guaranteed by the First Amendment to the United States Constitution.

FRANK MARSH, State Treasurer, et al., Defendants,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CV79-L-294

ERNEST CHAMBERS,

Plaintiff,

vs.

FRANK MARSH, State Treasurer, et al.,

Defendants.

Statement of Issues on Appeal

(Filed January 19, 1981)

COMES NOW the plaintiff and pursuant to Federal Rules of Appellate Procedure 10, and Rule 11 (a) (2) of the local rules of the United States Court of Appeals for the Eighth Circuit, states the issues on his appeal on the above-captioned matter to be as follows:

1. Whether the District Court erred in failing to find both as a matter of law and a matter of fact that the civil rights of the plaintiff, Ernest Chambers, as protected by the Free Exercise and the Establishment clauses of the First Amendment of the United States Constitution were violated by defendants Lewis et al, by permitting daily prayer on the floor of the Nebraska Unicameral Legislature, and by permitting the appointment of a Christian chaplain on an ongoing and continuous basis.

2. Whether the District Court erred in failing to find that the defendants Palmer and Lesis (sic), et al., had created an excessive entanglement between the State of Nebraska and the Christian religion by having a Christian chaplain delivering Christian prayers on the floor of the Nebraska Unicameral Legislature for 15 years and

that the Christian religion became the unofficial or de facto state religion under those circumstances.

ERNEST CHAMBERS, Plaintiff

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DECISION OF THE TRIAL COURT

The judgment and the memorandum of decision of the District Court for the District of Nebraska, Warren K. Urbom, Chief Judge, presiding, are found as Exhibits B and C in the petition for writ of certiorari beginning at pages app. 5 and app. 7 respectively.

Therefore, the judgment and memorandum of decision are not reprinted herein.

DECISION AND ORDER IN QUESTION

The decision and order of the United States Court of Appeals for the Eighth Circuit, affirming in part and reversing in part the district court, and the Court of Appeals' order staying the issuance of the mandate pursuant to its decision and order are found as Exhibits D and E and the petition for writ of certiorari beginning on page app. 25 and app. 40 respectively.

Therefore, the decision and orders are not reprinted herein.

OTHER PARTS OF THE RECORD TO WHICH THE PARTIES WISH TO DIRECT THE COURT'S ATTENTION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV 79-L-294

ERNEST CHAMBERS,
Plaintiff,

vs.

FRANK MARSH, State Treasurer, et al.,
Defendants.

TRANSCRIPT OF TESTIMONY

ERNEST CHAMBERS, RESPONDENT

Direct Examination

BY MR. FRIEDMAN:

(Page 2) Q. Senator, Chambers how old are you sir?

A. 43.

Q. What's your address?

A. 3116 North 24th Street, Omaha, Nebraska.

Q. Would you give the Court a brief resume of your educational background, please?

(Page 3) A. I finished Lothrop Elementary School in Omaha. I went to Tech Senior High School, from where I graduated. I obtained a degree from Creighton University and a law degree from Creighton Law School in 1978.

Q. Do you have any other training?

A. I'm a trained barber.

Q. All right. And what is your current occupation?

A. I'm a barber, legislator.

Q. All right. When were you first elected to the Nebraska Legislature?

A. 1970 was my first term.

Q. And I take it you have been returned every election since that time, is that correct?

A. Fortunately for my constituents, unfortunately for me, yes.

Q. All right. When was the last time that you were re-elected?

A. This past November.

Q. And by what plurality?

A. About 85 percent of the vote.

Q. And which District do you come from?

A. 11th.

Q. Is that a predominantly black District in Omaha?

A. Yes, it is.

(Page 4) Q. Senator Chambers, would you describe a typical legislative day for you when the Legislature is in session?

A. Generally I try to arrive early. I'll go into the chamber, because on occasion I have to use the large volumes, many volume set dictionary. Then around 9:00 o'clock, or should the session be set to start at 10:00, I will leave the chamber because they're going to have prayer. After the prayer is over then I return. On occasion I have not been able to get out of the chamber prior to the commencement of the prayer. And on those occasions trying to be at least courteous, I would remain for the prayer.

Q. Now, we'll get into the prayer in just a moment. But during the morning session of the Legislature when, about the time that the prayer takes place, are the Senators generally (Page 5) around talking to one another about various legislative matters?

A. Yes, there's quite a bit of milling and discussion.

Q. Is that really an integral part of the legislative process?

A. For a lot of Senators it s (sic) one of the most essential parts of the day.

Q. I take it that gives you an opportunity to freely exchange ideas with Senators when they're basically supposed to be around in one group?

A. Right. In addition to that to determine the bills that are likely to actually come up. And the position that various Senators might take on them.

Q. Now, before we get into the prayers, I'd like you to describe to the Court in your own words, Senator, your own particular religious beliefs.

A. I don't believe in anything supernatural. By that I mean, magical or partaking of the nature of witch

craft where you can, by any type of incantation or ceremony, invoke the intervention of supposed or so-called spiritual forces to change things. My whole life, my system of values is based on the principle that I want to be treated a certain way. So I'll treat other people a certain way. I would have to say that I'm opposed to seeing the strong take advantage of the weak. And that would be about what my system of values would (Page 6) be based on.

Q. Would you classify yourself as a Christian?

A. No way could I be considered a Christian.

(Page 11) Q. Now, with reference to the prayers, could you state to the Court basically the time that those prayers are read by the chaplain?

A. You mean by the clock, the hour?

Q. Yes.

A. When, if we start at 9:00 or at 10:00, then when that hour arrives that's when the prayer is said.

Q. How long do they usually last?

A. About two minutes on the average.

Q. Do you excuse yourself before the prayers are said normally?

A. Yes.

Q. And where do you go?

A. Sometimes I stand outside the chamber, sometimes I go back to my office. Just wherever.

Q. Now, I take it you have been there during the time that the prayers are said, is that correct?

A. Yes.

Q. And as a matter of courtesy and custom, do the members of the Legislature stand during the prayers?

(Page 12) A. Yes, they do.

Q. And if you were to remain there during those particular prayers, would you feel compelled to stand also?

A. By the word compelled, there is no physical force or coercion that would be brought to bear on me. But since these are the people that I work with, I do stand. So there is a type of pressure that is felt when I get caught in the chamber when the prayers are said.

Q. Now, you mentioned that you would absent yourself from the legislative chambers. Would you explain to the Court why you do this?

A. Because I don't want to be there when the prayers are said.

Q. And why is that?

A. I don't believe in what the prayers deal with. I don't acknowledge a God or a Christ or the various other aspects of the Christian religion that are contained in those prayers. As a member of the Legislature I should not have to be a part of a religious ceremony when I'm there during the time that I am to represent by constituents. I feel that if I would stay there then I would be going along with the practice that I think is totally improper for a Legislature to get engaged in. I see a situation where tax money paid in by my constituents is going to pay the salary of a man who represents a specific

religion. In the same way that everybody should be free to (Page 13) practice whatever religion they want to I should be free in my official capacity from religion. So for those reasons and others I won't stay there.

Q. Does it in effect inhibit your own personal religious thought?

A. Not only that, it inhibits to some extent the relationship that I have with certain Senators there.

Q. How does that happen?

A. They know what my feelings are because I've made them very clear. And on occasion because the chaplain and I are almost in a race to see whether he'll get to the front before I can get out the back door it creates for people who think a prayer as a sacred hour somewhat of a spectacle. And they feel these types of things should not occur. That I should stay there. It's not going to hurt me. I've had these things said to me. While the prayer is going on I can think about football if I want to.

Q. Other members of the Legislature have commented to you about your absence during the prayer, is that correct?

A. Yes, they have.

Q. Have you been criticized because of it?

A. Greatly.

Q. Now, would you say that the very fact that you absent yourself creates some political divisiveness between you and the other legislators?

(Page 14) A. There's no doubt about it. Because regardless of the fact that the prayers mean nothing to me, they mean something, apparently, to the people who are there. And since we all understand how people feel toward things that are dear to them, if they see somebody taking what is dear to them in a light vein it can't help but cause a negative reaction to that person. And again, not to be too repetitive, there have been comments made to me about my failure to stay in the chamber when the prayers are said.

Q. Now, if the, if there was a moment of silence and meditation, without any religious content at all, would that trouble you at all?

A. As long as there was no characterization of that period of silence that would connect it with religion. As long as nobody tried to tell you how you should, what posture you should be in while there is silence, I would feel that that is a neutral act and people can take it or leave it. It wouldn't make any difference.

Q. Now, are you personally offended by the fact that there is a salaried Christian chaplain who delivers prayers each morning in the legislative chamber?

A. I am deeply offended by it.

Q. Can you explain that any more than you've already explained?

A. Perhaps If I were to select a religion that would (Page 15) approximate my personal views and I would eliminate from that religion all concept of a supernatural force, maybe I could relate to a Shinto priest or a Buddhist monk or a Muslim, or a native American. But I

know from having been in that Legislature for 10 years that none of these things would be tolerated. So to have everybody else's point of view degraded and put down by selecting and paying with tax money one individual representing the Christian church is highly offensive to me.

Now, I can't say what my feeling would be were I a member of one of these other religious denominations or cults. But I can speculate that if I were a member of one of these and I knew that my minister would not have the same acceptance as their Christian minister is given, not only would I be offended I might would see the need to take some affirmative action of a kind that would be considered insulting. Such as sitting at my desk, rattling papers, opening and closing books. Then if I were asked why I'm doing that I'd say what I'm doing may be is offensive to you as what you're doing is offensive to me.

(Page 16) Q. Senator Chambers, based on your experience as a legislator, have you formulated an opinion as to whether rule 1, section 21, dealing with the creation of a chaplain has a legitimate secular legislative purpose?

A. If I may be allowed to give an answer so that it's clear what I'm trying to say, the words contained in the rule all are religious by definition. A chaplain is a minister appointed to conduct public religious services. Religion in this context has to do with the recognition of the existence of a supreme being to whom you must be obedient, whom you must worship. And then the word prayer is the means you use to contact the supreme being. So since the language creates a situation where every-

thing done is religious and being done by a religious person, there is no way it can be said to be secular. There is a self contradiction here. We understand a lot of things. And define them in terms of their actions and operations. The only actions and operations of this (Page 17) chaplain are religious. So there cannot be a secular purpose ascribed to that rule and its purpose.

Q. Now, based on—could you describe to the Court a little bit of your early religious training?

A. I was reared in what I could describe as a religious straight jacket. I grew up in a church called the Church of God and Christ which is holiness or fundamentalist. It would probably be considered in these days a part of that group known as the Moral Majority. They believe in the Bible word for word as it's spoken. A fish swallowed Jonah. Literally Lot's wife was turned to salt when she was fleeing from Sodom and Gomorrah and looked back when God told her not to. Samson killed 1,000 Philistines with the jaw bone of a jackass. Jesus took three fishes and five loaves of bread and fed 5,000 people. He walked on the water, later was crucified, got up out of the ground, came back to life and went to heaven.

When I was young I accepted all those things just as they were stated, not as yarns, not as examples to illustrate a point like Aesop's fables. But I believed that in the way it was written that's the way that it was. God one day came down and took some dirt, some mud and made a man. Then he took a rib out of that man and put it in the green house and made Eve.

I believed all that just like it was written. I believed (Page 18) it to such an extent and there was a carry over

through my high school years. I read the Bible eight times from cover to cover while I was in high school looking for what they tell me in church or answers to why I'm here. Why other people are here. Why there is sickness in the world. Why children are born crippled. Why they're born deformed and retarded when there's a God who is supposed to love everybody. And in all the reading that I did I couldn't find those answers. I found this God that they had taught me about as a child telling people to go to war, to destroy a nation and leave nothing living, leave nothing standing, to salt the land so nothing will grow. Kill men, women and babies who hadn't done anything. A God who brought a flood and drowned little babies, who hadn't done anything. A God who is going to create a place called hell and put his children in where they'll burn forever.

As I began to read these things for myself from the book on which this religion was based my whole attitude changed. While I was very young I tried to believe and respect those things that people believed in, which people I respected. And until I began to read for myself I could go along with it as maybe most people do now. But when I read I changed my whole approach to it. And if that Bible and the things written pursuant to it are the basis for a religious belief in a supernatural being I had no such belief because there (Page 19) was no basis for it.

Now, that is basically what my early years were with reference to religion. I went to church all the time. I went on Sunday. I sat there all day in wool pants itching and suffering for the Lord on hot summer days when they had no air conditioning. But I didn't mind it. This is what I was taught that it was about. I'd go on Friday night. I'd go to Tuesday night prayer service why you

stay on the floor on your knees so long it feels like your bones are going to come through your skin. I watched older people. I'd hear in the Bible, have it read to me, suffer the little children to come unto me and forbid them not for of such is the kingdom of heaven. Then the way older people treated children, their attitude seemed to be, bring the little children to me and I will make them suffer. There was all this inconsistency between what I was taught and what I said.

Q. Senator Chambers, I take it you testified you were raised a rather devout, strict Christian?

A. Yes, I was.

Q. And you were acquainted with the precepts of the Christian faith?

A. Intimately. And I even considered myself a Christian at one time.

Q. Based on your experience as a Christian and based on your experience as a legislator, have you formulated an (Page 20) opinion as to whether the fact that there is a chaplain who is a Christian in the Legislature, who recites prayers which are basically Judeo-Christian and mostly Christian serves to advance the Christian religion?

A. It definitely does. That is the only purpose of these prayers and that is the only religion that is advanced.

Q. Does it in any respect put a de facto seal of approval on the Christian faith?

A. There is no question about it.

Q. Would it be, in your opinion, something that would mean that the Christian faith is really the accepted or the normal religian?

A. Sure. And that's even stated by members of the Legislature when we have debates about the chaplain. They will say these are the principles that made this country great. These are the things that America must go back to to continue to be great. When they say these things, that expression, these things, are referring to these Christian principles espoused by the chaplain. It's clear that they are creating an official religion which is backed by the Legislature which is funded by tax money.

(Page 21) *Cross-Examination*

BY MR. CRONK:

Q. Well, let me state it in another way. If the chaplain, whoever that might be, were not compensated, would you still have objection to the existence of the chaplain and the morning offerings?

A. Yes, I would. Because, again, the Legislature is saying that whoever this person is is the one officially recognized by the state as being correct. The legislative chamber is being given over to this person for the practice of his or her religion.

(Page 22) Q. If a legislative chaplain were to offer these same prayers in content as are typified by those included in the prayer book, but the chaplain was not an ordained clergyman, would you similarly object to the morning offerings?

A. Certainly. Because the effect is the same. The actions are the same. The purposes are the same. It's merely a matter of not having attached a certain label to the one who is doing it. Just like I'm trained in the law but I'm not a lawyer because I don't belong to the bar association. But (Page 23) the knowledge is nevertheless there.

Q. Okay. Is there, is it an accurate statement essentially to say then that your grievance is having a legislative chaplain deliver any morning offerings with any religious references whatsoever?

A. If the terms that you've used are taken to be defined in the way we've used them or that I've used them, then, yes. I'm opposed to that period.

Q. If the same practices were carried out by different defendants, different persons comprising the Executive Board, a different ordained clergyman serving as chaplain, your objections would still to be same?

A. Yes.

Q. So it's not dependent upon the particular defendants that you've named in the petition?

A. No.

Q. In essence, then, you seek to simply devoid the Legislature from having a legislative chaplain deliver morning offerings, go before the, or to open each day's legislative sitting as has been the practice?

A. Okay. When you say as has been the practice, you're not substituting the word offerings as being distinct from prayers, you mean the word offerings in your question to be the same as prayers?

Q. Let me just say prayers.

(Page 24) A. I'm opposed to that.

Q. Okay. Are you aware that on the reverse side, I believe, of one dollar Federal Reserve notes currently is stamped the logo or motto In God We Trust?

A. Yes. That on which it is stamped is the God in which the trust is placed.

Q. I am aware of your sentiments in that regard. In your opinion, is that logo, does it manifest the same degree of religion or religious purpose as you are concerned about in this action?

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(Page 24) A. To answer the question as you've asked it, I have to say this. When you are given this piece of money it matters not whether you look at it or not. Its value is in what it can be used for in terms of an exchange. You're not asked to submit to a certain point of view or anything else in order to spend it. So I think the placement of those words was a political gesture and has no religious content whatsoever.

Q. (By Mr. Cronk) Do you recall that when Mr. Pevar was sworn in before the Court he took an oath that ended with the phrase so help me God?

A. Sure. And that again is like abracadabra in a magic show. It does not cause anything magical to happen. It is traditional and historical and has no religious significance (Page 25) whatsoever.

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(Page 25) Q. (By Mr. Cronk) Would you agree with the fact that the affirmation, that part of the affirmation

which included the phrase so help me God contained a religious reference, that being God?

A. Sure.

(Page 33) Q. I believe you also stated that on the occasion when you have been in the chamber and when you have been present during the morning offering that the offering itself has inhibited your religious beliefs. And again I don't mean to mischaracterize your testimony. You answered that question of Mr. Friedman rather quickly.

A. What we have to realize here is that words, when I applied them to myself, will have a very specific meaning to me. That's why I stated briefly what my concepts of religion would be if I were going to apply that term to my beliefs. So what I mean by that is this. When none of my values incorporate the concepts of a supreme being and I have to stand in there and listen to somebody making such an invocation and paid by tax money, then it does, it's a negative kind of influence on me.

(Page 34) Q. When you state that the delivery of the morning offering then does inhibit your belief or have that impact on you, isn't it a correct characterization that it has that effect because of your beliefs as a matter of principle rather than as a matter of any notions you adhere to based on theistic or nontheistic religious belief?

A. Again, I know this, that the constitution guarantees me certain rights as a citizen. That one of these rights is that I can be free from the state imposing a religious ceremony on me. I know that I have a right to represent my constituents who voted for me. And when I'm prevented from having access to the chamber at all

times because of a religious ceremony it inhibits me in a lot of respects. And we can say it's because of my personal views with reference to religion or whatever it is. The totality of my being is offended by what happens in the Legislature when those prayers are said there.

(Page 36) *Redirect Examination*

BY MR. FRIEDMAN:

Q. Senator Chambers, is it true that in 1973 the Legislature actually abolished the statute that provided for the Legislature having a chaplain?

A. That's true. They repealed that law.

Q. So at one time it was grounded in state law and now it's simply grounded in legislative rule, is that correct?

A. That's correct.

Q. Your objection to the word, or to the use of a chaplain, I take it, then, is essentially grounded on the fact that chaplain by definition is a religious figure?

A. Yes.

CHARLES STEPHEN, JR.

Direct Examination

BY MR. FRIEDMAN:

(Page 39) Q. All right. And have you reviewed the prayers of Dr. Palmer that have been received into evidence?

A. I have, yes.

Q. Did you in fact review and read the deposition of Dr. Palmer that was in evidence?

A. I did.

Q. Are you basically familiar with the term chaplain?

A. Yes, I am.

Q. Would you explain what a chaplain is generally thought to be within the religious community?

A. A chaplain generally is a religious figure who operates in a, generally in a nonreligious setting, such as an (Page 40) institutional setting, a hospital, a prison.

Q. Would it be accurate that the term chaplain actually refers, though, to a religious figure by definition?

A. Yes, I thought—I meant to say that. A religious figure who operates primarily in a nonreligious setting.

Q. Are you familiar with the term prayer?

A. I am.

Q. And what, generally speaking, is a prayer in a religious setting?

A. A religious statement, spoken or unspoken, which seeks to communicate with deity or the unknown or to express one's feelings about deity or the unknown.

Q. Can prayers by definition ever been secular in nature?

A. I don't think of them as secular. I think probably not.

Q. Is the office of chaplain ever secular in nature?

A. I think a chaplain is a religious figure.

Q. Now, directing your attention to the prayers of Dr. Palmer, have you formulated an opinion based on your experience of a clergyman of 20 years as to whether these prayers are secular in nature?

A. They are clearly religious prayers.

Q. Have you formulated an opinion as to whether they are Christian in nature?

A. Roughly half of the prayers that I have seen in three booklets, roughly half of them were, had Christian (Page 41) terminology, such as Jesus Christ or Our Lord or terminology such as that, yes.

Q. And those that do not mention Jesus, are they nonetheless religious in nature?

A. Yes, they are theistic in nature and religious.

(Page 43) Q. Do you have an opinion as to whether having a chaplain in the Legislature has a secular purpose? That calls for a yes or no as to whether you have the opinion.

A. I don't think of it as having a secular purpose, no.

Q. And can you state why you have that opinion?

A. Well, a chaplain, perhaps again by definition, is a religious figure. The prime responsibility of the chaplain I believe, is to offer public prayers. Neither of these examples are secular in their purpose.

Q. Have you formulated an opinion as to whether the existence of a Christian chaplain in the Legislature advances the Christian religion? Have you formulated an opinion, yes or no?

A. It gives a certain approval, yes, to the Christian (Page 44) religion, yes.

Q. And would you explain that answer?

A. Well, by the simple fact that the Legislature, the chaplain is, and I believe always has been a Christian, there is some sort of, it seems to me, some sort of general tendency to approve of a particular prospective or point

of view in religion, and perhaps even to disapprove of others. The religious belief of the chaplain is probably representative of the religious belief of the Legislators.

Cross-Examination

BY MR. CRONK:

(Page 47) Q. To give me an idea, I think you stated, again I want to try to characterize your testimony as accurate as I can, that by definition what might make a particular utterance or (Page 48) writing a prayer would be if it were a religious statement if it seeks to communicate with deity or express feelings, one's feelings, I guess, about deity. Is that—

A. Or, I think I would extend that, if I did not, to say not necessarily deity but the unknown or the mysteries of life or the universe itself or cosmos. And I also said that I think a prayer is either, can be stated verbal or unstated.

(Page 49) Q. Let me go back to the example of the administration of the oath. Have you had occasion to witness the admission of oral oaths of public officers, presidents or whatever, inaugural addresses, which have incorporated some kind of a phrase or an affirmation with a, the religious reference of so help me God?

A. Have I had occasion to witness this? Yes, I have.

Q. Would you consider the word God to be a reference to an identifiable religious deity?

A. Yes, I would consider that to be a belief.

Q. Would you consider that utterance to be a prayer?

A. No.

Q. Could you, how would that be distinguished from a situation?

A. Well, generally I would think of prayer as more thoughtful.

Q. I'm sorry, more what?

A. Of more thoughtful. And I think of that as almost a pro (Page 50) forma statement that becomes kind of rote, a rote statement that is not, that is given without thought. The repetition of words does not make something a prayer.

Q. Would it be fair to characterize the morning offerings of the chaplain that you've scrutinized as being religious in nature on the basis of reference to deity as opposed to reference to other notions or words or language which would have religious significance? That those prayers are religious primarily by reference because they identify deity?

A. I think I would say no. I don't think they are religious primarily because they refer to deity.

Q. Okay. Why, what would be the basis that would, that has lead you to conclude that they are primarily religious?

A. Some of the prayers, I think I'm remembering them inadequately, perhaps, do not perhaps even refer to deity. But I think the mood that is created, the beauty of the statements themselves, the contemplative aspect of them, also helps to make them prayerful.

(Page 51) Q. Would you dispute that in certain public ceremonies that (Page 52) have their roots in tradition or ritual that the use of prayers or other utterances

delivered by identifiable ordained clergy persons which include religious reference and references to deity serve a purpose, or don't primarily serve the purpose of advancing religion, but simply enhance the overall ceremony with an increased solemnity or an appreciation of the genuine significance of the event?

A. Which perhaps by definition makes it religious. Because it does advance solemnity and add some sort of overall mood to the events. Perhaps this is also part of what we mean by religious.

(Page 53) Q. Based on your definition of prayer and keeping that principle in mind, is it possible that an utterance might refer to deity, readily recognizable with a particular religion or religion generally, without really advancing religion at all?

A. I think that's possible. I think it's not what we generally see as in prayers on public occasions. The purpose is to advance religion and to state the importance of religion.

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(Page 53) Q. Let's me backtrack here. Do you feel that one would be capable of composing any kind of an utterance that had incorporated within it references to deity, say God, in such a way as it would not at all advance religion?

(Page 54) A. Yes. A speech that mentioned deity in passing, certainly.

Q. Now—

A. I don't think it would. Its primary purpose is not to advance religion and it probably would not in any sense advance religion.

Q. Would it be correct to say that whether or not that indeed is the purpose or effect depends on the context of the offering, including such things as the purpose for a particular assembly, the inclinations and expectations, predispositions of those to whom it would be directed that would make it a speech rather than a prayer?

A. Well, there's a difference between a speech and a prayer and, yes, the context does make a difference. A speech that made references to diety or to Christian terminology or some sectarian terminology is one thing and a speech that uses Christian terminology to prove a point or to convince listeners is an entirely different sort of a speech, it seems to me. The same with a prayer.

(Page 56) Q. In the context of religion. What is it about a reference that affirmatively advances religion as opposed to simply refers to it in a neutered sense?

A. To people, especially people who do not have a religious foundation or do not hold religious beliefs, almost any utterance that uses religious terminology is a religious utterance and advances religion. To them I think it would be objectionable.

ROBERT E. PALMER, LEGISLATIVE CHAPLAIN

Direct Examination

BY MR. CRONK:

(Page 62) Q. Okay. And have you served as chaplain to the Nebraska Legislature since that time?

A. Since that time, yes.

Q. I wonder if you might explain briefly the circumstances surrounding your appointment to that position in 1965?

A. As best as I can recall there was a public announcement in the press to the effect that the previous chaplain had died and there was something indicating that a new chaplain was being sought. And on the suggestion of some friends I allowed my name to be submitted. There were many names at that time. And there were many people who were interviewed at that time. I think they were almost all clergy persons from the Lincoln area. And I was selected at that time. And my name, I believe, was put before the Legislature, probably (Page 63) by the Executive Board. And that's how it came about.

(Page 65) Q. (By Mr. Cronk) What is your primary responsibility as legislative chaplain, Dr. Palmer?

A. Most obvious is the morning prayers and offerings.

Q. Was the morning offering, the matter of the morning offerings ever discussed during the interview process which you were involved in prior to your selection as chaplain?

A. Not by the Executive Board.

Q. Was there any official comment at all on the matter of the morning offering, and particularly the content of the morning offerings that you would be giving?

A. No.

Q. Would you explain what you perceived then, your responsibility to be in connection with the purpose for the morning offerings and their subsequent delivery?

A. I conceived that as a result of the tradition and history of the Legislature that a part of the morning cere-

monial was the offering of a prayer or time of meditation.

Q. Have you been, ever been made aware during that interview process or at any time subsequent of any official policy statement of the Legislature or the Executive Board as to those morning offerings, other than the fact that they be offered?

(Page 66) A. No.

Q. Have you had, in your experience as an ordained clergyman, an occasion to offer prayers, invocations, or the like at other public ceremonies, such as high school baccalaureates?

A. Yes. Often.

Q. In connection with those occasions, I wonder if you might explain your basic purpose in appearing and composing the offerings or utterances in connection with those gatherings?

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(Page 66) A. I conceived of them as a ceremonial occasion. Sometimes I would be asked to give a prayer, sometimes I'd be asked to make a speech or read something.

Q. (By Mr. Cronk) Is it an accurate statement that the, your purpose in, your purpose and intent in composing and delivering the morning offerings before the Legislature is the equivalent of that in those kinds of situations?

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(Page 66) A. I'd say it's comparable.

Q. (By Mr. Cronk) I wonder if you might briefly explain the (Page 67) process—well, first of all, is there

a process or a particular manner in which you compose the morning offerings to be delivered in the legislative chamber?

A. It varies from day to day. There is a general process through which I go.

Q. Would you explain that, please?

A. There are times when I take the opportunity to compose a number of prayers, offerings, meditations, of a general nature. After it was moved by the Legislature itself, one of the Senators, that these morning offerings be included in the journal, it became necessary for me, for their inclusion, to have these written out in advance and a copy be given with the clerk preparing the journal. So because of that it became necessary for me to have them written out. I originally did not write them out in advance.

Now, what I often did was that due to conversations of the Senators, something I had seen or heard on the news in the morning, or read, the prayers would be changed a great deal from what I had written. And I had no way of having them written out exactly as they were given. So because they are printed that way does not mean they were always given that way. What I tried to do was incorporate something of the spirit and flavor and point of that particular day in the prayers. The point might be a political happening, it might be a tragedy, it might be a death, it might even be the (Page 68) weather. And I would try and incorporate that as a point of identification for the Senators and hopefully what I said would become more relevant because of that.

Q. In undertaking that process and composing a prayer on the day to day basis, what is it that you intend

to effect? What purpose do you try to carry out in the offering?

A. I could imagine the purpose varying from one day to the next. But in general, I would hope that it would be a reminder for those who were present that they were called upon and being watched in the hope that they might thereby do their very best in their deliberations and discussions and committee responsibilities for that day.

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(Page 68) Q. (By Mr. Cronk) Do you ever resort and incorporate secular writings in the composition of the morning offering?

(Page 69) A. Yes. A secular writing might be from the morning newspaper, might be from literature, might be from almost any place.

Q. Do you incorporate religious references in the composition of the morning offerings?

A. Yes, I do.

Q. Can you describe the references that, or identify the references that you use that are most commonly used?

A. I'd say under the Judeo-Christian heritage.

Q. You make references to God?

A. Yes.

Q. Is it your intent and your purpose in those references that, to the extent that they are religious references, that religion versus nonreligion or any particular religion be promoted or particularly singled out and referred to?

A. No.

Q. Would it be accurate to state that most of the references are to deity?

A. Most.

Q. And most are to deity most readily identifiable with the Christian religion?

A. With the Judeo-Christian tradition.

Q. Is there a distinction which you see in the religious references which you incorporate in your prayers or your offerings as advancing religion as opposed to not advancing (Page 70) religion?

A. I readily make a distinction.

Q. I wonder if you could explain that distinction?

A. I do not intend to advance religion by my participation in the beginning of the Legislature each day. But rather I hope thereby through that ceremony to remind all those assembled of their responsibilities as Senators through their reflection upon the realities which they hold dear and the beliefs that they may hold important which have a bearing on the decisions they make that day.

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(Page 70) Q. (By Mr. Cronk) Do you have an opinion as to what would distinguish an utterance or an offering with religious references from one that advances religion from one which simply, or as I believe you've stated, is an attempt to impress upon the Senators the importance and the significance of their responsibilities?

A. There are several criteria that I would have in answering that question.

(Page 71) Q. What would those be?

A. One would certainly be the context in which they were offered. It strikes me that the context of a Sunday morning service of worship is quite different from the context of the Nebraska Legislature at 9:00 o'clock on a Wednesday morning. I would also say a different criteria I would use would be my intent. My intent in a service of worship would be greatly different from what it is in the Legislature. And I would say the predisposition of those persons assembled would make another great difference as to whether it was advancing religion or no.

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(Page 71) Q. This notwithstanding the fact that it does incorporate references identifiable?

A. It does.

Q. During the course of your tenure as legislative chaplain, has there ever been occasion for anyone else to offer the morning prayer?

A. Yes. Often. Brought about by two things. Either my absence from the city, in which case someone else would be (Page 72) asked by me, or, two, the various Senators would from time to time ask if their clergy person might be allowed and invited. And whenever that request has come I have always honored it.

Q. Do you know—do you have knowledge of the fact that clergy persons from other faiths than Christianity have offered the offering on occasion?

A. Yes. They have.

Q. Do you know right offhand what those religions or faiths might have been?

A. One that first comes to my mind is from the Jewish faith.

Q. Have you initiated attempts during the course of your tenure to solicit other clergy persons or persons to volunteer to deliver the offering?

A. Yes. Throughout the years I have. There has been difficulty with that, however. Because of the time schedules of other clergy persons.

Q. To the best of your knowledge, has there ever been an occasion where either a member of the Legislature or somebody else has requested permission to deliver a morning offering in your stead that was denied?

A. Never has it been denied to my knowledge. Lay or clergy.

(Page 75) Q. You did testify that you do attempt to allow the individual Senators to relate to divinity as they perceive it?

A. I would hope that could happen.

Q. During the course of the offering?

A. I would hope so.

Q. But you distinguish, or that factor alone, in your opinion, does not result in those offerings being worship as you've just defined it?

A. No. Because in those prayers, which I deliver before the Legislature, perceived as offerings or however,

I try to incorporate elements which are understandable to and germane to the experience of the Senators.

For example, it is publically known and printed in the press the various religious preferences that the Senators may or may not have. And from that alone I gather something of the religious backgrounds or present religious preferences of the Senators. In the light of that it would seem more germane to their understanding of the Divine to incorporate elements out of the Judeo-Christian heritage rather than some eastern religion.

And when I incorporate the elements of the Judeo-Christian heritage or the secular heritage, I perceive these as not like a drop of water which colors, or a drop of chemical which would color an entire beaker of clear water, (Page 76) but more like, not from the point of view from chemistry but from the point of view of physics. It's laying side by side certain concepts. And so in one prayer there may be Jewish, there may be Christian, there may be secular words as such.

But I really think that these words are made religious or not religious more by the intent of the prayor, the person who is participating in the prayers by hearing them, than by the specific words themselves. I suspect some of the greatest prayers may have no reference to the Divine at all.

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(Page 76) Q. Is it your intention or purpose that the effect of your (Page 77) morning offerings be to avow any particular religious faith or faith in religion versus nonreligion?

A. I have done my very best assiduously to avoid any particular faith or sect or group of religious references, such as Presbyterian, Lutheran, Methodist, whatever it may be.

Q. During the course of your tenure as chaplain, have you had occasion to become aware of the offense to anyone's sensibilities that may have been occasioned by your morning offerings?

A. Two counts in 1980. The first account another clergy person had offered a prayer while I was absent one day. And it was pointed out to me by someone that a Jewish Senator felt that it was very explicitly Christian in its tone, in its terminology, and that it would be well if this person were not asked for that reason.

And so taking that cue, you may look at the prayers offered during 1980 from that point on, which was very early in the year, and I don't think there is any reference to Jesus or Christ in this year, because it was pointed out to me, second hand or third hand or whatever it was, that someone raised a question about another Christian minister being too explicitly Christian.

And then at least from the press, or television, from the media, it was clear to me that Senator Chambers was not in favor of these references. So these are two occasions (Page 78) when it's happened this year.

(Page 82) Q. Are you compensated, Chaplain Palmer, for your services?

A. Yes, I am.

Q. And what is the form of that compensation to you?

A. At the present time I receive a check from the state. It has varied over the years. When I was interviewed and asked to serve initially I was not told about the compensation, only that there would be remuneration. I did not know the amount. It has changed and generally became enlarged over the course of the years. By whose action, I suppose the Legislature or the Executive Board of the Legislature. Since there are amounts withheld and so on, I can't say exactly, but it comes to around $300 a month during the course of the Legislature.

Q. Payment is made by check?

A. Payment is made by check.

Q. And the check is made out to whom?

A. The check is made out to Robert E. Palmer. And it is, I believe it's signed by the State Treasurer.

Q. Does, is the check turned over by you to the church?

A. No. I receive the check from the legislation—from whoever's serving the Legislature, a clerk, often. Sometimes it's been mailed. And I would deposit that in the bank or spend it as I would any other money that I may receive.

Q. Is there any official position or policy of the church (Page 83) in connection with the services you perform for the Legislature?

A. Our church grants me freedom, as I imagine most churches do, to become involved in community activities. Whether it's this or offering a prayer to baccalaureate or serving as chaplain for some other group in the commun-

ity. It's an individual decision on my part. And it really means taking extra time out of my day to do it rather than time away from the church and its responsibilities.

Q. Is it accurate to say that you appear in furtherance of your services for the Legislature as an individual rather than as a representative of the church?

A. That's correct. That's correct.

(Page 85) *Cross-Examination*

BY MR. FRIEDMAN:

Q. Dr. Palmer, you mentioned that you were the pastor of Westminster Church in Lincoln, is that correct, sir?

A. Correct.

Q. How big a church is that?

A. Around 2600 members.

Q. And is it one of the larger Presbyterian churches in the city?

A. Yes.

(Page 86) Q. Is it also one of the larger Protestant churches in the city?

A. Yes.

Q. Are there any ministerial assemblies that you belong to?

A. I'm a member, officially, of a larger body of Presbyterian ministers, if that's what you mean.

Q. Is there a body of local ministers in Lincoln of various denominations?

A. There is a group that meets periodically for lunch. I think it's called Minister of Fellowship. I'm not certain.

Q. Do you belong to that?

A. There is no membership in that. You just go and have lunch there if you wish.

Q. You are basically aware, I take it, of the number of churches in Lincoln?

A. I have an approximate idea.

Q. Approximately how many are there?

A. If I had to make a guess, I suppose I'd guess maybe 150.

Q. All right. And of that how many of them would you call in the roughly Protestant denominations?

A. Well, some of those that I might call Protestant don't wish to be called Protestant. By that I mean, for example, is Episcopal Protestant or not? Some wish to be called, some don't.

Q. Let's rephrase then. Of the 150—

(Page 87) A. That's a guess on my part.

Q. Of the 150 churches, how many of them are not Catholic?

A. Well, I would guess safely over a hundred.

Q. All right. And do you know how many Catholic churches there are?

A. Maybe 50. I don't know.

Q. And I take it there is a Jewish Synagogue and a Temple?

A. Yes, yes.

Q. And I take it there's some other religious denominations in Lincoln too, are there not?

A. I've more or less lumped them under Protestantism in general.

Q. Are there any denominations that are not Christian and are not Jewish?

A. Conceivably.

Q. But very few, would that be correct?

A. I just don't happen to know of one.

Q. Would it be accurate to say that the majority of the religious people in Lincoln are essentially Christian in nature?

A. The majority of people in Lincoln are unchurched.

Q. The majority of people who go to church are Christian, though, are they not?

A. Yes.

Q. Of those, isn't it true that the majority of them are (Page 88) Protestant as opposed to Catholic? Would that be a correct statement?

A. That's a pretty safe guess.

Q. All right. And would you agree that those on the floor of the Legislature, there are 49 Senators?

A. Correct.

Q. And of that, is it true that the overwhelming majority of them are Christian?

A. Yes. Not by my judgment, but by stated religious preference that I've read in the press.

Q. You know that to be a fact, though, do you not?

A. If I can believe what I read, yes.

(Page 89) Q. All right. Now, would you agree that your religious beliefs, being a basically a Protestant minister, coincide roughly with the majority of the Senators in the Legislature, in the broad general scope that you are a Protestant minister as opposed to—

A. Not as a Presbyterian necessarily, but my general religious concepts probably are not greatly at variance with the majority of the Senators.

Q. So you're basically in tune with the majority?

A. I believe so.

Q. And they are in tune with you?

A. In as much as we have similar religious heritage.

(Page 90) Q. Would it be correct that the prayers or utterances that you make each morning were basically those that you perceived not to offend those of the majority that had the similar religious beliefs as you?

A. I would not say I was trying to avoid offending them so much as I was hoping to say something that they may find helpful.

Q. All right. But what you said, those kind of prayers, and we'll call what you said prayers.

A. All right.

Q. Were basically in line with the religious thoughts of the overwhelming majority of the members of the Legislature were they not?

A. I would say that's a fair surmise.

(Page 91) Q. And during that five year period approximately 48 percent of the prayers that were at least published used the word Jesus or reference to Jesus Christ, would that be correct, sir?

A. I'll take your word for it, I haven't counted them up.

(Page 92) Q. And you all know, and you're aware of the fact Senator Chambers had strong intellectual and moral convictions against listening to those prayers, are you not?

A. He made that clear.

Q. He made it clear before I ever filed this lawsuit, did he not?

A. He didn't close (sic) to be present when prayers were offered.

Q. And in deference to him, I take it you didn't stop praying?

A. I didn't stop praying.

Q. Even though you knew one of the members of the Legislature was really upset about it?

A. Even though I knew that he had beliefs which were not coincidental with mine or those of the majority of the Senators.

(Page 93) Q. I guess the question is, were you praying in a way that you believed personally and also that it was coincidental that the majority of the Senators also believed in that same manner?

A. Well, as I said before this morning's—

Q. Excuse me, sir. I believe it can be answered yes or no.

A. Then you have to repeat it.

MR. FRIEDMAN: Could we have it read?

THE COURT: Yes. The reporter may read it. (Pertinent question read by the reporter.)

A. Yes.

(Page 96) Q. Well, I suppose, let me ask you if you gave this answer. I suppose my purpose is to provide an opportunity for (Page 97) Senators to be drawn closer to their understanding of God as they understand God. In order that the Divine wisdom might be there as they conduct the business for the day. Did you say that?

A. That's another purpose, yeah, bordering on the heritage.

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(Page 97) Q. And again with reference to your purpose, do you recall in response to my questions—counsel, I'm on page 20—my purpose is, during a few moments to enable the Senators and those around them to pause for a moment and reflect upon the Divine significance of their daily doings, do you remember that?

A. Yes. Uh-huh, that's to me similar to what I said before.

Q. That's right. Once on direct examination and once on cross-examination.

A. Uh-huh.

Q. And when you say Divine, are you not referring to a religious thing?

A. To their understanding of the Divine, yes.

(Page 98) Q. What's your understanding of the Divine, sir?

A. My specific understanding, I would not force on the Senators. Because that is my own held belief as a Presbyterian minister.

Q. When you say Divine understanding you re (sic) referring nonetheless to a religious concept, are you not, sir?

A. I can't imagine talking about the Divine and not talking about a religion.

Q. The answer is yes?

A. Uh-huh.

(Page 99) Q. Now, on January 27th, 1979, I'm quoting you delivered a prayer to the Legislature and I'm going to read this to you, sir. It is good, O God, that it is not custom that brings us again into this sacred moment of prayer, but our deep sense of need. Forgive us that we talk too much and think too little. Forgive us all that we worry so often and pray so seldom. Most of all, O Lord, forgive us that helpless without thee we are yet unwilling to seek thy help. Give us (Page 100) thy grace to seek thee with the whole heart, that seeking thee we may find thee and finding thee we may love thee and

loving thee we may keep thy commandments and do thy will. Amen. Do you remember that prayer?

A. Yes. I don't remember the specific day, but—

Q. Were you engaged in a religious dialogue when you uttered those words?

A. I hope I was.

Q. And it was to God, was it not?

A. It was to God, oh, yes.

Q. And it was a religious experience for you at that time, was it not?

A. I cannot say that.

Q. It was right on the floor of the legislative chamber, was it not?

A. I hope it was a religious experience.

Q. Did you hope that the other Senators would think it would be a religious experience for them?

A. I hope they draw on those resources and find out more what God wanted for them that day.

Q. So one of your functions on the floor of the Legislature was being an instrument of the Divine, was it not?

A. I hoped I would be, as the Senators would be instruments of the Divine also.

Q. Wasn't that one of your purposes there?

(Page 101) A. By definition I think that's what a chaplain's to do, is to offer a prayer.

Q. And be an instrument of the Divine?

A. As we all are to be.

Q. As a matter of fact, as a matter of fact, didn't you say that when I'm on the floor of the Legislature I'm merely an instrument of the Divine?

A. As I hope the Senators are.

Q. You hope the Senators are an instrument of the Divine also?

A. I hope so. As they understand him. Or her.

Q. Now, is it true you believe that a chaplain in and of itself is a religious figure?

A. Certainly. Even the word has religious connotations.

Q. So you would really agree with Reverend Stephen and Senator Chambers when they say that the very word chaplain has a religious connotation?

A. Oh, yes.

Q. Would you agree with them when they say that the word prayer has religious connotation?

A. It has religious connotation.

Q. In effect you are a religious official of the Legislature, are you not?

A. I'm a chaplain of the Legislature.

Q. That's right. And that's a religious office?

(Page 102) A. By connotation.

Q. With religious responsibilities?

A. Yes.

Q. Is that correct?

A. Uh-huh.

(Page 103) Q. Would you agree that your function then is a peculiarly religious one and that you give a prayer?

A. I would say it would be a religious function by anyone who gave a prayer.

Q. Any time you give a prayer it's a religious function, isn't it?

A. If you were to offer a prayer I would have religious connotation with that.

Redirect Examination

BY MR. CRONK:

(Page 105) Q. Is it your opinion, Dr. Palmer, that a function, an activity which has religious connotations, as the word has been used here, can still serve a secular purpose?

A. It can still serve a secular purpose.

Q. Is it your testimony here that in essence that characterizes the service that you perform?

A. I would suspect that by some of the Senators it is perceived as a secular and by others it is a religious. Even though the word prayer and chaplain has a religious connotation. I mean, if I get up there and use certain words how do I know what kind of an experience that is for the people who are there in the chamber unless they tell me? Some have said it may have helped them, others

may have said it has not helped them or even offended them.

Q. Chaplain Palmer, do you believe, is it your opinion that every religious function or any activity that incorporates or manifests religious connotation advances religion?

A. No. It acknowledges religion, but not in my (Page 106) understanding does it advance religion.

Q. Your testimony then is that it is possible that a particular activity with religious connotations can amount to an acknowledgment of religion but not to go so far as to amount to an advancement of religion?

A. I would make that distinction, yes. For religion to advance I'd want to know what is happening to advance it. And I don't always see the advance of religion as a result of religious activities or activities associated with chaplains. I might wish it otherwise.

Q. Is it your intent at all in the morning offering to advance religion?

A. Not to advance religion. As I mentioned before, no one has been proselyted to any particular church because of my involvement there.

Q. This is your intent, knowing full well that the reaction of particular legislative members may be different?

A. It probably will be different. I may have, or we may have trouble here with the word advancement. To me advancement is winning converts to the faith, trying to convince someone to my point of view or another point of view. That to me is an advancement of religion.

(Page 107) *Recross-Examination*

BY MR. FRIEDMAN:

Q. Now, do I understand that the, it's your testimony that your prayers don't have a tendency to advance any religion?

A. Yes.

Q. Would you agree that by having a uniquely Christian chaplain in the Legislature it adds a certain air of officialdom to the Christian faith?

A. It could be perceived as such.

FRANK LEWIS, CHAIRMAN OF THE EXECUTIVE BOARD

Direct Examination

BY MR. CRONK:

(Page 111) Q. Do the rules of the Legislature also prescribe the responsibility of the legislative chaplain?

A. Well, I really don't think so. I think it says that there shall be a chaplain. And I think most of that has become a part of the historical precedent within our body, which is the same with some of the responsibilities of the clerk, the sergeant at arms. And most legislative bodies have that kind of tradition built up rather than in the rules. I know the Congress does that through the door keeper and some other people. It's assumed that the chaplain, and it's very clear, that one of his responsibilities is to deliver a daily prayer.

Q. That responsibility is provided by rule?

A. I believe that's correct.

Q. Are you aware of any official policy statement, declaration or any source reflecting same as to the intent or purpose of the legislative chaplain in addition to the rule?

(Page 112) A. I know of none. I know of none. The chaplain is part of our historical precedent, part of our ceremonial, I suppose would be the term, part of the legislative process.

Q. Is the chaplain compensated?

A. Yes, he is.

Q. Who has the responsibility for, or where does the authority lie for providing for the compensation of the chaplain?

A. The board provides, the Executive Board provides for compensation and levels of compensation.

Q. And what is the source of authority for the board?

A. The board has that authority under the statutes that create the Executive Board of the Legislature charging them with the responsibility of carrying out the ongoing administrative functions of the Legislature. The Executive Board is a statutory creature.

(Page 113) Q. Does the, have you, are you aware as a result of your service in the Legislature, chairmanship of the Executive Board of the Legislature, that there is a particular order of proceeding to each legislative day?

A. Always has been. Used to be 10:00 o'clock, which I favored, now they've moved it back to 9:00.

Q. By order of proceeding, I mean which particular certain steps will be taken up in order?

A. That's what I was getting at. That other was a little trivia. The Legislature starts at 9:00 o'clock. The informal part of the session really is the prayer itself. The President calls it to order. And at that time he asks the chaplain to provide the prayer. And then that's followed by really the signification of the members that they're (Page 114) present, by the presiding officer requesting that the members designate their presence by the showing of the light from their chair to indicate that they are there.

Q. Is the particular order of proceedings of each legislative day prescribed by legislative rule?

A. I believe it is. It's also prescribed by the legislative rules and also prescribed by the authority given to the Speaker of the Legislature to establish an agenda which must be followed unless altered by a vote of 30 members of the Legislature.

Q. Is it your testimony then that the opening prayer is intended to be an integral part of each day's legislative proceedings?

A. Certainly. There's five or six functions that are taken care of, usually without objection. The call to order, the prayer, the roll call, asking for amendments and clarification of the journal, the information that the clerk must read in at that particular point in time. All those are the perfunctory things as the members are arriving on the floor and getting ready for the orderly or the substantive issues of the day.

(Page 115) Q. I believe you testified that for the—restate that. Is it your understanding and is it the practice that at the beginning of each legislative session the Executive Board goes through the process of recommending officers, including a legislative chaplain?

A. That's correct.

Q. Is there a process that the Executive Board undertakes in order to accomplish that end?

A. The board's a very democratic organization. And the (Page 116) process, in past years, that's become a perfunctory thing unless there's been some objection to a particular officer. I mean, our clerk, in fact we performed that function last week for the next session. The law requires us to have those nominations in the hands of the Speaker on the first day. So the old board does that responsibility. We simply nominate for a consideration by the full membership the clerk, the assistant clerk, the sergeant at arms and the chaplain.

The process for the discussion of that is that any member has the full authority, that is a committee of equals, has the full authority to bring up at any time any item of discussion for any one of those officers if that member wished to. And it's suggested from time to time to provide for a search committee, they may do so at that time. We have found it unnecessary over the history of the Legislature to involve ourselves in a search and selection process, such as we're going through by statute now, for instance, for the ombudsman. That's a very detailed selective process.

The process there is any member may advance any name he wants to. And through the democratic processes

a majority of the members of the committee can determine what names we will forward. And that's been the process used.

Q. Is it accurate to state then that there is no formal organized process for evolving the recommendation which is followed in every particular instance at the beginning of (Page 117) each session?

A. That's correct. That's correct. There is no process. The important factor, of course, is it's a nine member board and it's absolutely necessary to have five votes.

(Page 121) Q. On the basis of your actual experience in that particular recommendation and your services as a member of the Nebraska Legislature for the past eight years, do you have an opinion as to what the purpose and intent of the legislative chaplain and morning offerings is?

A. I, as a member of that body, I know the problem of trying to get the process rolling to get to the substantive issues. That no doubt is why there are five or six or seven perfunctory items to get the issue rolling. My judgment that has always been part of the ceremonial opening of the legislative process. And that's the function that serves.

I think that provides some, for those that engage in that kind of activity, that's a quiet moment for them. That's a time to get themselves ready for that kind of a process. But it's only one part of a series of things that we do to open the day up and get down to the job that we're responsible for, and that is to make the legislative policies of the state.

Q. Are you typically present in the legislative chamber at the time the offering is made?

A. I'd say about half and half.

Q. Do you listen to them?

(Page 122) A. Sometimes.

Q. Have you ever been particularly struck with the particular morning offering in the sense of having been instilled with some sense of encouragement or some awareness of the importance of the work of the Legislature that day?

A. I don't believe that as much as a sense of concern, for instance, those that I particularly pay attention to, those when we've had a death or a tragedy within the legislative process or a family. Senator Brennan, who was a very close personal friend of mine, I'm sure that I was moved by that. Senator Keith Bond, who was a very close friend of mine from Norfolk, when he died. Maybe the death of Jerry Whelan's father. Those kind of things. But as far as a stimulus for me in terms of achieving my legislative goals and objectives with all due respects, I don't think so.

Q. Do you have a particular religious persuasion or affiliated with a particular religion?

A. I am not a member of any organized church. I suppose if you categorize me I would be a Protestant.

Q. Do you consider the morning offerings to be a religious ceremony?

A. No, I don't.

Q. Do they serve any religious purpose for you?

A. I think it's a time that you develop the order within the body of that process. But as far as being something that (Page 123) I would center on as a religious experience for me, I would think not.

Q. On the basis of your experience, your membership in the Legislature and your experience in serving as Chairman of the Executive Board, particularly in connection with the responsibilities of the board as to the legislative chaplain, do you have an opinion on why the legislative chaplain, since its inception or at least over the course of years, has been filled by an ordained clergyman and the morning offerings have employed religious references?

A. I don't know. I think anybody that's a student of the history of this country has found out that's part of our tradition. I suspect, to my knowledge, when Senator Mahoney was Chairman of the Executive Board, probably one of the most devout Catholics that I personally know, he could have appointed anyone he wanted to.

Dr. Palmer has had the job. He's done it in a very satisfactory way. Dr. Palmer is a personal friend, I think, of most of us. I certainly include him as one of my personal friends. You know, I don't see the necessity for changing. And particularly the necessity would only come if anybody thought that there was an attempt to inject some kind of a religious dogma into that area, which I have not seen.

(Page 124) *Cross-Examination*

BY MR. FRIEDMAN:

Q. Senator Lewis, you were here a few moments ago when Dr. Palmer, in response to a question on recross-examination, said that in his opinion the fact that there was a Christian chaplain did in fact add a certain air of officialdom to Christianity. You were here when he said that?

A. I was here when he said that.

Q. And would you agree that really the only clergy in the history of the Legislature has always been a Christian clergyman?

A. To my knowledge that's correct.

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(Page 124) Q. And the majority of the Legislature, legislators, according to Dr. Palmer, are of the Christian persuasion. Would you agree with that?

(Page 125) A. I think that's correct.

Q. Now, as a student of the Legislature and of the legislative process and of the members of the Legislature and in knowing that most of those people are really Christian, do you think that the majority of those Christian Senators would approve of a Buddhist monk chanting a Buddhist prayer every day for 15 years?

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(Page 125) A. I don't know about 15 years.

Q. (By Mr. Friedman) That's how long Reverend Palmer's been there.

A. I don't know that would—I don't know who would object or not. I would suspect John DeCamp would object and we'd go down the line. I think there might be some that would object to that.

Q. Don't you think it's pretty likely that most of the Legislature would object to that on a daily regular basis?

A. Oh, if we had, on, probably on a daily basis, yes.

Q. All right. And by the same token, if you had a Sioux Indian medicine man delivering an Indian chant every morning for about 15 years, do you think the Legislature would object to that?

A. As a descendant of the first Americans I wouldn't, but I (Page 126) assume the rest of them would.

Q. As a matter of fact, if you had a Rabbi delivering a Hebrew prayer every morning for 15 years, don't you suppose all those except Senator Simon and Senator Fellman might have felt a little awkward and a little embarrassed?

A. I'm not sure about that.

Q. As a practical matter, Senator Lewis, if you had a Buddhist who delivered a Buddhist chant every morning to that Legislature it would add a distinct Buddhist flavor to that legislative body, would it not?

A. I don't think that's true. I mean, from that point of view I doubt if it would be true that that would have an influence to make all of them Buddhists.

Q. It would add a flavor of Buddhism, though, would it not? Wouldn't you agree with that?

A. If you had someone there that was a Buddhist priest it would obviously have some influence of having something to do with Buddhism I guess.

(Page 127) Q. Would you say it was more recognized, at least, put that religion in a more recognized position, would it not?

A. From whose perspective?

Q. From the perspective of the public who sees a Christian or a Buddhist or a Jewish religious figure connected with the legislative body.

A. In all candor, Mr. Friedman I don't remember very much of the public viewing the prayers. Because usually at 9:00 o'clock not very many of them are there. But it—

Q. The press is there, isn't it, usually?

A. Those that rise early.

Q. The legislative chamber is open to the public, is it not?

A. Certainly. Well, the galleries are, not the chamber.

Q. Television cameras are there usually recording it for (Page 128) the educational channel?

A. I don't think they ever show the prayers.

Q. The prayers are open to the public, are they not?

A. The body is open to the public, yes. I'm saying as a practical matter the public usually is not there.

Q. The Legislature is probably the most central or one of the most central governmental institutions in the State of Nebraska, is it not?

A. Oh, yeah. I would think that's true.

Q. And you have a uniquely religious figure that's an official of that legislative body, do you not? Isn't that true, sir?

A. Oh, yeah. The chaplain is certainly—

Q. The chaplain is a religious figure, is he not?

A. No question about that.

Q. The prayers are religious prayers, are they not?

A. I assume prayers are somewhat similar to religion, if that's what your question is.

EXHIBIT 5 — DEPOSITION OF
ROBERT E. PALMER, LEGISLATIVE CHAPLAIN

(Page 2) *Direct Examination*

BY MR. FRIEDMAN:

Q. Would you state your name, please, and address?

A. Robert Palmer, 1036 Fall Creek Road, in Lincoln.

Q. Reverend Palmer, my name is Herb Friedman. I'm here today representing Senator Chambers. I'm going to ask you some questions concerning the case that's been filed in the United States District Court. And if at

any time you don't understand my questions, please ask me and I will try and rephrase them. Fair enough?

(Page 3) A. Fair.

Q. Okay. You have been the Chaplain of the Legislature since 1965, is that correct?

A. Yes.

Q. All right. Can you tell me the mechanism by which you were elected or selected to be Chaplain of the Legislature?

A. I believe it was generally known, certainly through the press, that the previous Chaplain died while in office.

Q. Who was that?

A. 15 years ago. I never knew the man.

Q. Okay. How did you get in the picture?

A. Along with many other clergy persons, I met with the Executive Council, I believe, and was interviewed by them.

Q. All right.

A. And on the basis of their deliberations, I was selected.

Q. What denomination do you belong to?

A. Presbyterian Church.

Q. Do you know the denominations of any of the other people that were interviewed?

A. It would be unfair for me to say. There must have been many. 15 people, perhaps.

Q. 15 years ago, back in 1965, was this a paid position?

A. I don't honestly remember whether there was salary initially. If there was, it was a smaller amount than there is now.

(Page 4) Q. All right And what is the salary now?

A. I don't really know. I've never been told. And I've never been told how it was raised.

Q. All right. When you say how it was raised, what do you mean by that?

A. I know it's more now than it was 15 years ago. I've never made salary a point of my being asked to be Chaplain.

Q. Do you get the salary?

A. I receive a check during the course of the Legislature only, of course. Approximately a monthly basis.

Q. But the check does go to you personally, it doesn't go to your church?

A. It goes—it's made out to me.

Q. Now, when you, when the Legislature first hired you or certain Senators or the Legislature hired you, was there any conversation as to the context of the prayers or how your services would be performed?

A. You say the context of the prayers?

Q. Yes.

A. At the opening of each session.

Q. Any comments by the legislative officers as to whether or not those prayers should be Christian in denomination or nonsectarian or was anything ever mentioned about it?

A. I don't know what you mean by nonsectarian, but nothing was ever mentioned.

(Page 5) Q. When I say nonsectarian I guess not referring to any particular religious faith.

A. Nothing was ever said.

(Page 6) Q. Okay. Now, I wonder if you'd go through there and tell me which of those prayers reflect the Judeo, Jewish doctrine and which of them refer to the Christian doctrine?

A. It would take me a long time to do that.

Q. Well—

A. These are the prayers for an entire session.

Q. Well, I know. But you have told me that many of those prayers reflect the Jewish doctrine. And I'd kind of like to know which of those prayers reflect the Jewish doctrine.

A. I said the Judeo-Christian tradition.

Q. All right. Tell me which of them reflect the (Page 7) Judeo-Christian tradition. Directing your attention to January 13, 1975, on page one.

A. I was reading, for example, the first one in the book.

Q. Okay.

A. And I frankly feel this is the kind of prayer which reflects almost what I would call the American civil religion just as when you, I was asked if I promised to tell the truth so help me God. I don't think that was a sectarian comment that I made when I said I would tell the truth so help me God. I don't think there's anything sectarian in January 7th, which is as far as I've read, for example.

Q. Let's go down to January 13th.

A. All right. Well, I would say except for the last sentence, it reflects the—well, I'd say the entire prayer reflects the Judeo-Christian tradition. The only point that is specifically Christian is the last sentence. The rest I regard as frankly the kind of a prayer that could have been offered by a religious person of any faith.

Q. The last sentence, what does the last sentence say?

A. In the name of Christ Our Lord.

Q. You'd agree, I assume, that—

A. It's a Christian.

Q. Narrows it down to a Christian prayer?

A. I wouldn't say sectarian, but I'd say Christian.

Q. Perhaps we ought to define our terms so we are not going (Page 8) to quibble about semantics. When I say sectarian I'm referring to some sect, some religious sect. Now, is that what you understand that to mean?

A. A sect, I'm not certain what you mean by sect.

Q. Some particular religion.

A. A sect is not a religion. To me it would be a gross injustice to millions of people around the world were I to say that Islam is a sect or the Jewish faith is a sect or the Christian faith is a sect. In no way is that a sect by any stretch of my imagination or by any jumble of semantics I can imagine.

Q. What does nonsectarian mean?

A. Nonsectarian is one that does not promote the furtherance of any specific group, cult or division of the Judeo-Christian faith.

(Page 10) Q. Can you tell me why you frequently use the words Jesus and Christ in your prayers?

A. It strikes me that Jesus is a major figure in the Judeo-Christian heritage.

Q. I understand that. But why did you use them in your prayers?

A. Why do I use quotations from the Psalms or Moses or Abraham? Because this country is a country that recognizes the Bible.

Q. Are you willing to concede that your prayers were for the most part, Christian in tone, at least?

A. I would not say that. I would say they use the name of Jesus some times at the very end. But I would say that by and large they could be delivered by someone of any faith, by and large.

Q. Except for the references to Jesus?

A. Well, you see, Jesus is recognized by most Jews that I know as a great teacher, even a prophet. And by all Muslims that I know as that and more.

Q. All right. Has anyone at the Legislature ever suggested (Page 11) that your prayers before a session or at the beginning of a session be, have no reference to any religious figure?

A. Someone made a comment this year that they would prefer that Jesus specifically not be so prominent in the prayers. And if you will check my prayers this year, Jesus has not been mentioned.

Q. Since this lawsuit, I take it, then—

A. No. Not since the lawsuit. Someone mentioned it to me this year.

Q. 1980?

A. Uh-huh.

Q. I take it the lawsuit had nothing to do with it then?

A. This was a matter of personal privilege that someone asked me as a personal friend, in confidence. And I said I respect that. And I have not used that reference this year, to my knowledge.

Q. Someone from the Legislature?

A. I believe it was someone on the floor this year.

(Page 12) Q. Would you agree that your services, that your prayers, at least, because of the frequent reference to Jesus, add a uniquely Christian flavor to your prayers?

A. I'd say by and large they're not Christian prayers. Not the kind I would ever offer in church, no. No, they're not specifically Christian prayers. There are references to Jesus to be sure. But there are equal references to the Old Testament. As a matter of fact—

Q. Would you care to point out some of these prayers?

A. If the truth were known, there are many secular references as well.

Q. Would you care to point out in those prayers which of those are secular and which—

A. And which are what?

Q. Just which are secular and which are nonchristian?

A. Well, I don't accept those as two categories, mutually exclusive. I think that both the Judeo and the Christian heritage have influenced the secular heritage immensely. And contrary-wise the secular heritage has influenced the Judaism (Page 13) heritage. At times it's hard to separate the two. But there are many things you and I talked about in conversation that have the flare of Judaism heritage.

Q. I suppose the question, Doctor Palmer, would you care to—

A. You asked about a sectarian reference. I'm just reading the first page, which is far as I have gotten.

Q. Where have you gone now? Which exhibit?

A. The only exhibit I've opened so far, which is first session 1975, the Nebraska Unicameral 84th Legislature.

All right. If I may just say something here. I'm talking in the very second paragraph, some old faces are gone from this chamber. That is not Christian or nonchristian, it's just a comment about life. I don't see that there's anything religious or irreligious.

I talk about the invigorating climate of freedom. Talk about frankness, fortitude, faithfulness. In the very next prayer I talk about plunging into the duties of this day's sessions.

Q. And you say, O Lord, our God?

A. As I did when I was asked to tell the truth today, so help me God. Yes, that's the God I'm talking about. The same one you asked me to talk about when I promised to tell the truth.

Q. I guess the question is—

A. There's only one God.

(Page 14) Q. Not your religion or my religion—

A. No.

Q. My question is, are the prayers you offer up for the most part Christian in flavor?

A. All right. Going on to the next one here. No. They are not. The very next one here, the whole paragraph I speak about silence in the senate chamber. I say, may no short circuits be made by our lack of faith, our high professions joined to low attainments.

Q. Faith in what?

A. Well, that's up to the individual Senator to decide, not for me to propose my religious convictions. I have never, never should, never would, never will, never have infused my particular religious convictions into the minds of the Senators.

My point has been, I have used words as our constitution has used words and as the Presidents of the United States for 200 years have used words into which the individual citizens may infuse their own meanings.

For example, I'm still on the first page, may no short circuits be made by our lack of faith. Our faith in America. Our high professions. Our profession to be a good Senator. Joined to low attainment. A low attainment is not being a good Senator. Our fine words. I see nothing Christian or unchristian or Jewish or unchristian about the word word (sic). (Page 15) Hiding shabby thoughts. Shabby, I never saw that word in the Bible. Friendly faces masking cold hearts. That's the kind of thing you could read in this morning's newspaper.

So, you know, when you talk about these, basically there or basically that, if they are anything they are basically not religious. They are of the stuff of life.

Q. The second paragraph on the prayer of January 9, 1975.

A. Uh-huh.

Q. That's in quotes. It says, "what we know not, teach us," et cetera.

A. Uh-huh.

Q. Where does that come from?

A. I have an extensive file of secular writings. And it's just out of that file. I didn't think it would be appropriate to say as I read in the New York Times last Sunday, dated such and such and place such and such. This could have come out of any place.

I don't know. It certainly did not come out of any religious writing. So I'd say in a sense that is, you asked about an example of secularism, that's secularism.

Q. Now, let's move on down to the 13th of January where we talk about—and I'm really primarily concerned about the fact that you mentioned Our Heavenly Father many times. You mention God many times. You mention Christ our Lord many times.

(Page 16) A. At the beginning of each prayer and at the end of each prayer there are from time to time references to deity. And I think that seems to be what concerns you the most. On the other hand, I don't know if a prayer would be a prayer if I said, O Statehouse hear us. Is not a prayer by definition a desire to involve deity? That force which created our world and gave this country freedom somehow or other to find some relevance for those 49 men and women standing on the floor and for those assisting them roundabout so that they may find some contact with this deity, whatever their religious or irreligious persuasion or lack of persuasion may be. That, to me, is one of the functions of a Chaplain.

(Page 17) Q. Well, let's go back and talk about the flavor that these prayers portray.

A. The flavor?

Q. The flavor. Would you say that they're Christian prayers, at least in the sense that you use the word Jesus and Christ? Would that be fair to say?

A. No, that wouldn't be fair to say at all. I have my specific reference points, as you do. The majority of the prayers are not Jewish, not Christian, not Islamic. And I could go on mentioning other faiths, which I think would be pointless.

The majority of the prayers reflect more of what I don't like to use as a phrase, but I will, to clarify things, just civil religion in American. The kind of religious expressions that are common to the vast, overwhelming majority of most all Americans.

Q. What do you mean by civil religion?

A. By civil religion I mean a religion that reflects the thinking of most Americans. And is not sectarian in any sense at all.

(Page 22) Q. You haven't talked about Allah, you've talked about God and Jesus.

A. The reason I did was because I was doing my very honest (Page 23) best to represent all the people of Nebraska and the convictions of all the Senators as best I knew them in making these prayers as general as possible so as not to offend one soul. But rather to lift every soul closer to who they are as human beings, to be more sensitive to all the people they serve and to the God whom they strive to honor.

Q. Well, I take it you would at least agree that these prayers are religious in nature, then?

A. I quite don't understand that question. I, it seems to me a contradiction in terms. Are these prayers religious? Is the sunshine weather? The sunshine is weather. The clouds are weather.

Q. Well, are you answering the question yes? The prayers are religious?

A. I'm answering it by saying people are religious. The things people do are religious. I was asked today to tell the truth, that was religious.

Q. All right, Doctor—

A. So I don't know what you mean by religious in that narrow sense.

Q. Are these prayers religious in any sense of the word at all?

A. They're not irreligious.

Q. Are they religious?

A. In a very limited sense that some people might choose to (Page 24) define them as religious. I would not choose to define them.

Q. You don't choose to define them as religious but some people would define them as religious?

A. I am sure they would. For me eating food is a religious act. Washing hands is a religious act. A good Jew knows that.

Q. Tell me, Doctor, moving on to February 12, 1975, just to pick up a date, again you say, we ask for this in the name of thy loving son, Christ our Lord. How does that particular phrase, A, deal with the Judeo-Christian

heritage, and B, with the American religious Christian heritage?

A. The reason I didn't pick up my prayer book to look at it because I had the feeling you were going to make a reference to something like that. And so I'm not looking at the book. But if I were to say, as David the great King said, that does not denigrate the Christian heritage. It reflects the best of the Hebrew heritage, the Jewish heritage. And I'm thankful for that. I think I am reflecting the best of the Christian heritage in using that phrase.

Q. I think you are too. Now the question is, isn't that a Christian prayer?

A. That phrase comes out of the Christian tradition.

Q. That's right. But if you look at the entire prayer you cannot call that entirely a Christian prayer.

Q. Does it have anything to do with the Jewish religion?

(Page 25) A. Parts of that prayer do.

Q. Would you agree with the fact that the last sentence of it really adds a Christian flavor to it?

A. I would say that among the many elements that that prayer reflects, that particular phrase which you chose does reflect the Christian heritage. However, if I give an invocation at a Rotary meeting and I ask for Jesus' blessing, that doesn't mean that everything that's said and done there and eaten and consumed and drunk there is a Christian meeting.

Q. The prayer, though, becomes a Christian prayer, though, doesn't it?

A. It has an element of the Christian heritage in it.

Q. You are a Christian clergy man?

A. I personally regard myself as not only a clergy man but as a Christian.

Q. All right. You are a Christian and you are a Christian clergy man?

A. I know I'm a clergy man. I hope I'm a Christion.

Q. I think the answer to the question is yes.

A. In many ways I'm not a Christian. In many ways I'm not a Christian.

Q. How are you not a Christian?

A. Many thoughts, actions, deeds, that do not reflect the Christian ideals.

(Page 26) Q. Would you care to elaborate on that?

A. I don't think of anything offhand. But I have not always been the best person I could be.

Q. Now, would you agree that these prayers—first of all, would you agree what you say beforehand is a prayer?

A. There are many definitions of a prayer. Now, I don't know what you mean by a prayer.

Q. Let's talk about what you men by a prayer.

A. If I wake up in the morning and see a glorious sunrise, I say, oh, beautiful; that's a prayer. If I go to sleep at night and just say, thanks for a good day; that's a prayer.

Q. What about what you say to the Legislature before they open up? Is that a prayer?

A. I would say that I strive to relate the Senators and their helpers to the divine. And if that is a prayer, then I'm offering a prayer.

(Page 35) Q. All right. To kind of sum up, would it be accurate to state that your prayers are civil religious, in your opinion?

A. They partake of the elements of the American civil religion, if that's a fair phrase to use.

Q. Well, that's the phrase you used. I didn't use it.

A. I don't like to use it because it's a misleading phrase.

Q. We want this to be your testimony and I want you to tell me how you would describe these prayers. If you don't think they're Christian, what are they?

A. I didn't say they were unchristian.

Q. I didn't say they were unchristian. I said, are they Christian?

A. I would say they have elements of the Judeo-Christian heritage and they have elements of American civil religion in them.

Q. All right. Would you say that they are religious in nature?

A. They are if the Senators choose to use them as such.

Q. Well, are they religious as far as you're concerned? (Page 36) You're the one that's using the words. I am—

A. I'm the one using the words, oh, of course, I'm the one using the words. But as far as I'm concerned, they are religious only if the Senators choose to use them as such.

Q. Are they religious intents as far as you're concerned?

A. If by religious you mean enabling the Senators to contemplate the divine before they begin their day's doings I hope they would do that.

Q. And they specifically deal with, in your opinion, the divine, which means, I assume, reference to God?

A. Reference to the supreme being of the universe. However that may be understood or he may be understood or she may be understood or they may be understood by any individual Senator.

Q. Do the prayers basically refer to what we normally refer to as God?

A. If you heard the prayer you would assume that it would refer to God as you normally understand him. If a person who had no concepts of God at all, I suspect that person would refer to whatever he thought the ultimate reality of the universe was, or she.

(Page 46) *Cross-Examination*

BY MR. CRONK:

Q. I wonder if you might explain, as you perceive it, on the basis of what your experience has been, what

the expectations have been explained to you to be, if there have been any, about what your function as Legislative Chaplain is? Describe your function, your role.

A. I suspect that my best understanding of that, in a narrower sense, is that I was told by the persons who made the decision and voted on me initially, that I was to offer a prayer at the beginning of each day's session. I think that was the intent of those who asked me.

Q. Okay. I want to try and come at this from a little bit different angle and maybe it will help round out the difficulty in the characterization, which is what we have been through. What would you say the purpose, what purpose are you trying to accomplish? What is your mission in delivering every morning of the Legislature that thing, whatever it is, we might call it?

A. I suppose my purpose is to provide an opportunity for Senators to be drawn closer to their understanding of God as they understand God. In order that the divine wisdom might be theirs as they conduct their business for the day.

Q. Is there a link between the prayer that is given and the Legislators functioning as Legislators later that day? I (Page 47) mean is there a causal—

A. I see a relationship. I see a relationship between the two. I would hope that a decision made or a prayer offered by a Senator in the morning might carry throughout the day in their making a decision that would be more in line with their best selves.

Q. What does the label invocation mean to you as compared to prayer?

A. The word invocation, I suspect, is one of these words sometimes regarded as religious in which people assume they may invoke God's presence at a meeting. The truth of the matter is God's already there. So what they're really invoking is their perception of the divine at that meeting.

Q. Okay. For what it is that you are doing every morning, is there any distinction that you feel is meaningful between labeling that as a prayer or an invocation?

A. I would be just as happy to call it a prayer as an invocation.

Q. Okay. So there is no—

A. No.

Q. —meaningful distinction? I believe you mentioned before, and I just want to clarify this, that there have been occasions in the past throughout your tenure as Chaplain, to yield the floor to other clergy persons?

A. Whenever and every time I'm asked to do so.

(Page 48) Q. Do you have any idea about, in a typical year, how many times that might happen?

A. I would suspect that it has happened less, recently simply because previously I went out and solicited people to offer prayers. Anybody regarded as a person of religious qualification.

Q. You had a higher return when you did that?

A. I had a higher return. And the reason the return is not so high, is they found out, I found they thought they were doing a favor for me when they were

doing this. I was not trying to ask them to do a favor for me. I was trying to get a more complete representation of the various religious beliefs of the entire Legislature.

The average clergy person, whatever, is a very busy person. And they could find it as an intrusion on their time. The general assumption was it was a real sacrifice for them to come, not just a minute or two, driving to the place, finding a parking place, preparing it. And so I realized it was an imposition on their time.

Q. Has there been some reluctance, when approached, on the part of other clergy persons to fill in?

A. Yes. Genuine reluctance, particularly if I asked them for the second time. And in all frankness, most clergy persons do not live in Lincoln who represent these Senators. And I would say more often than not when I'm asked by a (Page 49) Senator, quite often Omaha Senators but others too, may my priest, my rabbi, my ministers, whatever, give a prayer on such and such a day? I always say yes. And I would say most of the time they don't come because something comes up in their schedule. It means a real commitment of gasoline to come here today.

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(Page 49) Q. Okay. I just want one more time again, and not to belabor the point, this is the last time we we'll mention it. I wonder if you just might, I'm going to ask you to characterize the nature of the content and its intended (Page 50) purpose in your morning offerings before the Legislature, in your own words.

A. I've tried to draw upon the best that I know in the Judeo-Christian tradition and the religious sensitivities of the Senators who are present, as well as in their common thinking, and general values, those concepts, those words, those phrases, those meanings, which would give a healthy flavor to their being brought closer to an understanding of what God may want them to do that day.

EXHIBIT 1—1975 PRAYER BOOK

(Page 1) **January 8, 1975**

O Lord, our God, if ever we needed Thy wisdom and Thy guidance, it is now—as our Legislature begins a new session, standing upon the threshold of a new year, fraught with so many dangerous opportunities.

Some old faces are gone from this chamber—and we remember them; other new faces have come and we welcome them; many familiar faces have returned—and we are gladdened by them.

We are grateful that somehow our beloved State continues to go on with vitality, vigor and energized faith, and we pray that in this new year we together may move on to loftier heights and nobler achievements, for the good of the people in an invigorating climate of freedom, frankness, fortitude, and faithfulness—to what we believe, to one another, and to Thee.

Amen

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(Page 1) **January 13, 1975**

Our heavenly Father, in this moment of prayer, when there is silence in this senate chamber, may there not be silence in Thy presence. May our prayers be heard.

May no short circuits be made by our lack of faith, our high professions joined to low attainments, our fine words hiding shabby thoughts, or friendly faces masking cold hearts.

Out of the same old needs, conscious of the same old faults, we pray on the same old terms for new mercies and new blessings. In the name of Christ our Lord.

Amen

(Page 2) **January 14, 1975**

O God, our Father, as the battery is recharged without sound or motion, so wilt thou, in this moment of quiet, send thy spirit into the hearts and minds of each one here. With newness of life, with spiritual power, vision, and lively faith, enable them to meet all the demands which lie before them with glad anticipation, and then give them peace for the night. Through Jesus Christ our Lord.

Amen

(Page 5) **January 31, 1975**

For ties that continue to bind us together, even when the going is rough; for common purposes we continue to recognize as larger than we are, even when the business at hand taxes our patience and our constituents; for the privilege of sharing in the inspirations—as well as the frustrations—of events which make headlines . . . causing folks back home to smile, or to stop smiling; for the con-

viction we share that what helps our district helps our state; and what helps our state helps people; and what helps people is always right; for anything that may happen during today's session to deepen this conviction, and give it practical application; we now ask Your help, O Lord our God.

Amen

February 6, 1975

Creator God of the whole family of man; Father in Heaven of every family on earth; help us to understand that here in this house we are also one family.

We know that we cannot always be of one mind on the diverse issues which await our decision here, for we (Page 6) are—Republican and Democrat, Conservative and Liberal, rural and urban, male and female, Catholic and Protestant, Veteran and novice, white and black . . . nevertheless, one house, one family—its members standing side by side, each head bowed before one God, together asking that the common good rather than our individual preferences may guide us in all that we do here.

Amen

(Page 7) **February 12, 1975**

We are grateful for the lives of men and women who serve the needs of their times. The life of Abraham Lincoln speaks to us of the possibilities of our own lives. As we celebrate his birthday we would ask of Thee to help us to acquire his spirit of compassion, patience, and courage. Help us also to respond to the cries for help and guidance in our own times; this day is such a time; give

us then a right spirit for the cries of this day. We ask for this in the Name of Thy loving Son, Christ our Lord.

Amen

(Page 9) **February 25, 1975**

We acknowledge a creative and redemptive Power in events beyond our own; We seek forgiveness for whatever of our past that never should have been; We ask strength for whatever of the present is as it should be; We desire guidance toward those hopes for the future which conform to the Creator's design. O Lord our God: Forgive us, strengthen us, guide us for our own sake, and for the sake of the people we represent.

Amen

(Page 15) **March 17, 1975**

Have you ever wondered why we fold our hands when we pray? May I suggest the reason:

We fold our hands when we pray. The right and the left of us. The best and the worst in us. Heaven and earth about us. All come together when we fold our hands and pray. We fold our hands when we pray. The clenched fist of anger, the stubborn thumb of bitterness, the pointing (Page 16) finger of scorn, and relax together when we fold our hands and pray. We fold our hands when we pray. Within the folded hands fingers cross fingers. Our crosses and the Cross. All aware together when we fold our hands and pray. From the folded hands from the heart within. From the God above, from the Cross of Christ: Love—forgiveness—peace all bless together when we fold our hands and pray.

Amen

(Page 17) **March 24, 1975**

O Lord our God: we are aware of the things which You did in the fullness of times to make this a Holy Week; but we may not be aware of all the things we should be doing in our own time to keep it Holy.

By the example and spirit of the Holy One who once walked in our midst, inspire us.

May the days ahead when we recall His crucifixion and resurrection strengthen our faith, and issue in special blessing for all.

May the peace and joy of the Easter Season be upon Nebraska's representatives, and upon all they serve.

Amen

(Page 19) **April 4, 1975**

O Lord our God: we in this House want to become friends and advocates of every plan and program which will enable men and women and children to live better, easier, fuller lives; therefore we ask for imagination able to interpret statistical records and research papers in terms of the sufferings, the longings, the real life needs of human beings.

May it become the personal creed of each legislator never to seek anything for self which might short-change others, but always to seek for others the same good life that is sought for self. Our prayer is offered in the name of Jesus—our Friend, our Saviour, our Example, our Guide.

Amen

EXHIBIT 2—1977-78 PRAYER BOOK

(Page 1) **January 5, 1977**

Dear Lord and Father, if ever we needed Your wisdom and guidance it is now as our Legislature begins a new session standing upon the threshold of a new year, filled with so many wonderful and dangerous opportunities. Although we have been organized as a Legislature for 40 years, our traditions go back to the first dreams of democracy, and our thoughts stretch forward with high hopes for what we may yet accomplish in the future.

Some familiar faces are gone from this chamber, and we remember them; other new faces have come, and we welcome them; many familiar faces have returned, and we are gladdened by them.

We are grateful that somehow our beloved State continues to move forward with vitality, vigor and energized faith, and we pray that in 1977 we together may move on to loftier heights and nobler achievements, for the good of the people in an invigorating climate of freedom, frankness, fortitude and faithfulness—to what we believe to one another, and to You the God and Father of us all. Amen.

January 11, 1977

Our heavenly Father, in this moment of prayer, when there is silence in this senate chamber, may there not be silence in Thy presence. May our prayers be heard.

May no short circuits be made by our lack of faith, our high professions joined to low attainments, our fine words hiding shabby thoughts, or friendly faces masking cold heart.

Out of the same old needs, conscious of the same old faults, we pray on the same old terms for new mercies and new blessings. In the name of Christ our Lord. Amen.

February 1, 1977

We know, our Father, that there is a time to speak and a time to keep silent. Help us to tell the one from the other. When we should speak, give us the courage of our convictions. When we should keep silent, restrain us from speaking, lest, in our desire to appear wise, we give ourselves away. Teach us the sacraments of silence, that we may use them to know ourselves, and, above all, to know thee. Then shall we be wise. Through Jesus Christ our Lord. Amen.

(Page 2) **February 7, 1977**

Eternal Father, we ask thy divine guidance, strength, and sense of purpose be given to the members of this Legislature. Although they have great diversity within themselves and the people they represent, may they not strive to be individualistic comets flashing across the sky, but stars which are united into a constellation which gives a pattern and unity in the midst of diversity while amplifying their indivual convictions, may they ever remember they are part of the team working together to win the game for the benefit of the people of this state. In our Lord's name. Amen.

(Page 3) **March 4, 1977**

Hurried affairs of the day with all the demands and pressures that come upon us we forget Thee, and in our forgetfulness we are successful in denying Thy will.

Watch over us then, we pray, especially in these sessions of our legislative session. Guide us through each day as pressures increase, as obligations multiply, as voices conflict with voices, urging us to do this or that, and grant that somehow inside each of our lives there shall be a central place of calm and quietness where we can turn and listen to a voice which is like a sound of gentle stillness a still, small voice that guides and directs our lives, infallibly.

Help us to do Thy will in this house and in this Legislature through this and every year, we ask in Jesus' name. Amen.

(Page 4) **April 1, 1977**

Father in Heaven, on this day which we call Fool's Day, help us to be wise. Hear the prayers of this House as we pray for the needs of Your people.

Aid us in gaining solutions to our energy crisis and economic problems.

Be of assistance to our fellow citizens who are in our institution for the mentally and emotionally disturbed.

Help our brothers and sisters, who are deaf or blind. Console those who are in our prisons and give them hope. Be strength and light to our State Patrol and National Guardsmen. Give patience to our school teachers.
(Page 5)

Bless and reward all elected officials of our State and give them the love and understanding they deserve. Amen.

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(Page 5) **April 6, 1977**

Father in Heaven, the Christian Community has embarked upon the season of Lent which is a time of penance for past sins, self denial to bring one's desires under control and contemplation in order to reestablish perspective.

Help us to observe this season and merit from our practice of penance.

Give us a healthy sense of guilt and a knowledge that You have removed the sin and the guilt.

(Page 6) Bring our good, but sometimes unruly desires, under the control of our intellect.

Let us understand more clearly that You are the Beginning and the End. Amen.

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(Page 6) **April 13, 1977**

Father in Heaven, we ask You for the ability to be sensitive to Your teaching. Adjust our ears to Your word so that our hearts may be adjusted to Your will.

Help us pray together so that when Your will is known, we may do it together; that when crises occur we may face them together.

Nourish us with Your Spirit poured out for all of us; feed us with the Bread of Life; strengthen us with the power that makes us Your children. Amen.

(Page 11) **May 4, 1977**

Father in Heaven, Your Son taught us that not by bread alone does man live. We know that the truth He

taught us is the basis for our life and our hope. Keep these teachings ever before us.

But we certainly live by bread to a degree and are in need of Your blessings to make the ingredients grow. We thank You for the fine sowing weather and ask You now for fine growing weather. Soak our fields and meadows and in turn shine the marvelous rays of the sun on our crops that there may be enough to spare and to share. Amen.

(Page 13) **June 1, 1977**

Dear Lord, An honest prayer some of us might make this morning is simply, "Thank God its over!" These many weeks have been such a drain on so many of us, taking us away from responsibilities and loved ones elsewhere, and demanding so much of us. The memory of our last working day is still fresh in our minds, and some of us hope there will never be another one like it, even though it was a record day!

On the other hand, Lord, we are also grateful for these past months and for all the good that has been accomplished. May our decisions be for the benefit of the (Page 14) people of this state. Continue during the interim to give vision, courage, and integrity to each of the Senators. Bless them, their families and loved ones, till we meet again. Be with our Governor and Lieutenant Governor, the various officers and servants of this Legislature. May the people of this state, who often hear only the unusual things which occur in this room, appreciate the ability and dedication of this Legislature. Implant again upon our minds the truth that greatness is found in serving, and success in helpfulness. May this Legis-

lature continue to love you, their God, and serve all the people. In our Lord's name. Amen.

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(Page 14) **January 5, 1978**

O Lord our God, as we seek thy guidance this day, we do not ask to see the distant scene, knowing that we can take only one step at a time. Make that first step plain to us, that we may see where our duty lies, but give us a push, that we may start in the right direction. Through Jesus Christ our Lord. Amen.

(Page 15) **January 9, 1978**

Dear Lord, we recognize that prayer cannot balance a budget, but it can balance our minds; we also realize that we cannot expect you to come into our world everyday the way you came that first Christmas Day, but you can come into our worlds through the lives of others around us who care and share our dreams and goals, so in this prayer in this day, we ask that your truth be made known in our minds and hearts and in the minds and hearts of others around us that, together, your spirit may guide us as we strive to make this world more like what you intended it to be for all people. Amen.

(Page 16) **February 3, 1978**

O God of us all, may the members of this legislative body keep ever before them the high responsibility which is theirs.

They have an unprecedented challenge; may they make appropriate responses and continually to develop into statesmen. May their debates ever be upon issues,

rather (Page 17) than upon human personalities. Give this body the vision to have courage for greatness. May they respond to their challenges, living neither in their vacuum of futility or the gold fish bowl of exhibitionism. Guide them to live as responsible, elected officials, with courage, integrity, vision, cool minds and compassionate hearts. In our Lord's name. Amen.

(Page 18) **February 14, 1978**

O God, we consider our resources in money, men and land, yet forget the spiritual resources without which we dare not and cannot prosper. Forgive us for all our indifference to the means of grace thou hast appointed. Thy Word, the best seller of all books, remains among the great unread, the great unbelieved, the great ignored. Turn our thoughts again to that book which alone reveals what man is to believe concerning God and what duty God requires of man. Thus informed, thus directed, we shall understand the spiritual laws by which alone peace can be secured, learn what is the righteousness that alone exalteth a nation. For the sake of the world's peace and our own salvation, we pray in the name of Christ, thy revelation. Amen.

(Page 24) **March 20, 1978**

Father in heaven, the suffering and death of your son brought life to the whole world moving our hearts to praise your glory. The power of the cross reveals your concern for the world and the wonder of Christ crucified.

The days of his life-giving death and glorious resurrection are approaching. This is the hour when he tri-

umphed over Satan's pride; the time when we celebrate the great event of our redemption.

We are reminded of the price he paid when we pray with the Psalmist:

"My God, my God, why have you forsaken me, far from my prayer, from the words of my cry?

O my God, I cry out by day, and you answer not; by night, and there is no relief for me.

Yet you are enthroned in the Holy Place, O glory of Israel!

In you our fathers trusted; they trusted, and you delivered them.

To you they cried, and they escaped; in you they trusted, and they were not put to shame.

But I am a worm, not a man; the scorn of men, despised by the people.

All who see me scoff at me; they mock me with parted lips, they wag their heads:

He relied on the Lord; let Him deliver him, let Him rescue him, if He loves him." Amen.

(Page 28) **April 21, 1978**

Dear Lord, An honest prayer some of us might make this morning is simply, "Thank God its over." These many weeks have been such a drain on so many of us, taking us away from responsibilities and loved ones elsewhere, and demanding so much of us. The memory of our last working day is still fresh in our minds, and some

of us hope there will never be another one like it, even though it was a record day.

On the other hand, Lord, we are also grateful for these past months and for all the good that has been accomplished. May our decisions be for the benefit of the people of this state. Continue during the interium to give (Page 29) vision, courage, and integrity to each of the Senators. Bless them, their families and loved ones, till we meet again. Be with our Governor and Lieutenant Governor, the various officers and servants of this Legislature.

May the people of this state, who often hear only the unusual things which occur in this room, appreciate the ability and dedication of this Legislature. Implant again upon our minds the truth that greatness is found in serving, and success in helpfulness. May this Legislature continue to love you, their God, and serve all the people. In our Lord's name. Amen.

EXHIBIT 3—1979 PRAYER BOOK

(Page 2) January 9, 1979

Dear God, we hear that "prayer changes things," but that really isn't true. Prayer doesn't move mountains, but it can move us to move mountains. Prayers won't endorse our blank checks, nor pass the right bills, nor pass the correct legislation, but it can move us to do these things. Prayer doesn't so much need discussion as it needs doing Prayer isn't a motion to be tabled, it is a mood to be expressed. So as and if we take this moment for prayer,

teach us as our spirits reach out to you, that while You may not do all things for us, You can help us do the things when left to ourselves. Prayer doesn't offer escape, it gives encouragement, enlightenment, and can enable us to be better than otherwise we could. May that be our experience today. Amen.

(Page 5) **February 5, 1979**

Dear God, as we seek Thy guidance in the crucial decisions of this day, we do not expect to understand the ramifications of the problems confronting us knowing that we can only take one step at a time, and make one decision at a time. But make that first step plain to us, and that first decision clear, that we may see where our duty lies. Now, give us a push that we may start in the right direction. By the power of Thy Spirit. Amen.

(Page 6) **February 26, 1979**

Dear God, when someone asks us our religious preference, maybe we're tempted to say, "I'm a Jehovah's Bystander"—I was asked to be a Jehovah's Witness, but I just didn't want to get involved. Sometimes it's that way with us, not only in our religious preferences, but in our political preference, and our personal preference—we just don't want to get involved. And yet, that's the name of the game as far as we're concerned in this Legislature, we've been willing to get involved, by our campaigning, by our electionings, by our speeches and by our voting. Help us to (Page 7) understand that that's what it means to be a leader of the people, to be involved, in everything that involves the people of this State. Since we've gone this far in our involvement, help us to go all the way, dear God,

that we, individually, and as committee members, and as a Legislature, may be involved with each other, with the concerns of this State, with the needs of our constituents, and with You, so that we may not only be involved, but may revolve around that which is important, and evolve the kind of legislation which You can bless. Amen.

(Page 8) **March 26, 1979**

Gracious God, we have entered this legislative chamber, not only with a public agenda, but with our own private agendas. We who face the problems of this State also face our own problems. Moments of sadness are no stranger to us. Today some of our loved ones are facing illness and perplexity. And we who have shared moments of victory also know what it is to share moments of defeat. Merciful God, speak to each of us that renewing and transforming word, which is not merely the echo of our voices, but the Word which comes from Thee. Help each of us to meet this day in Thy strength. Amen.

(Page 9) **April 4, 1979**

O God, we pray that you will bless these men and women, chosen by the people of every district of this great State, for you know each one of them, their needs, their motives, their hopes, and their fears. Put Your arm around them to give them strength, and speak to them to give them wisdom greater than their own. May they hear Your voice and seek Your guidance.

(Page 10) May they remember that you are concerned about what is said and done here, and may they have a clear conscience before You, that they need fear no one.

So bless each of us according to our deepest need, and use us for Thy greatest glory; we ask it in our Master's name. Amen.

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(Page 10) **April 9, 1979**

Today as we are about to celebrate the great Holy Days of Christians and Jews, Holy Week and Passover, let us be reminded again through the faith and beliefs of our religions of the principles and directives which should guide us. May there be a continuing concern on your part as legislators for those who are in need, for those who are deprived of any of their rights in our State, and for the promotion of justice and prosperity for all. May these Holy Days, then, enable us to act as true followers of the beliefs which we have and may it find expression in every act and law that is passed. May this Holy Season be a happy season for us and for all people of this State. Amen.

(Page 12) **May 15, 1979**

Father in Heaven, our minds and our souls are turned to the question of energy. You have blessed this world with minerals and other sources which we, sad to say, sometimes have squandered.

Help us to find a way to preserve our resources, find new sources and to use them wisely.

Bless this Assembly today and inspire our leaders to provide leadership and courage in our search for solutions.

We ask this through Christ our Lord. Amen.

ORDER GRANTING LIMITED CERTIORARI

On November 1, 1982, this court entered the following order in *Frank Marsh, State Treasurer, et al. v. Ernest Chambers,* No. 82-23.

> "The petition for a writ of certiorari is granted limited to Question 4 presented by the petition."

Question 4 presented in the petition for writ of certiorari was stated as follows:

> Whether the Nebraska Legislature's compensation and retention of a single individual as Chaplain for an extended period of time renders its legislative prayer practice violative of the Establishment Clause of the First Amendment of the United States Constitution?